

## § 300.5

Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; or

(3) May be viewed on the APHIS Web site at <http://www.aphis.usda.gov/ppq/pim/accreditation>.

### § 300.5 International Standards for Phytosanitary Measures.

(a) The International Standards for Phytosanitary Measures Publication No. 4, "Requirements for the Establishment of Pest Free Areas," which was published February 1996 by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization has been approved for incorporation by reference in 7 CFR chapter III by the Director of the Office of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) *Availability.* Copies of International Standards for Phytosanitary Measures Publication No. 4:

(1) Are available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html); or

(2) May be obtained by writing to Phytosanitary Issues Management, Operational Support, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737-1236; or

(3) May be viewed on the APHIS Web site at <http://www.aphis.usda.gov/ppq/pim/standards/>.

[68 FR 37915, June 25, 2003]

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AUTHORITY: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75-15 issued under Sec. 204, Title II, Public Law 106-113, 113 Stat. 1501A-293; sections 301.75-15 and 301.75-16 issued under Sec. 203, Title II, Public Law 106-224, 114 Stat. 400 (7 U.S.C. 1421 note).

### Subpart—Imported Plants and Plant Parts

SOURCE: 62 FR 61212, Nov. 17, 1997, unless otherwise noted.

#### § 301.10 Definitions.

*Move (moved, movement).* Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved.

*State.* Any State, territory, district, or possession of the United States.

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### § 301.11 Notice of quarantine; prohibition on the interstate movement of certain imported plants and plant parts.

(a) In accordance with part 319 of this chapter, some plants and plant parts may only be imported into the United States subject to certain destination restrictions. That is, under part 319, some plants and plant parts may be imported into some States or areas of the United States but are prohibited from being imported into, entered into, or distributed within other States or areas, as an additional safeguard against the introduction and establishment of foreign plant pests and diseases.

(b) Under this quarantine notice, whenever any imported plant or plant part is subject to destination restrictions under part 319:

(1) The State(s) or area(s) into which the plant or plant part is allowed to be imported is quarantined with respect to that plant or plant part; and

(2) No person shall move any plant or plant part from any such quarantined State or area into or through any State or area not quarantined with respect to that plant or plant part.

### Subpart—Black Stem Rust

SOURCE: 54 FR 32791, Aug. 10, 1989, unless otherwise noted.

### § 301.38 Notice of quarantine; restrictions on interstate movement of regulated articles.

The conterminous 48 States and the District of Columbia are quarantined in order to prevent the spread of black stem rust. No person shall move interstate any regulated article except in accordance with this subpart.<sup>1</sup>

[54 FR 32791, Aug. 10, 1989, as amended at 66 FR 21050, Apr. 27, 2001]

<sup>1</sup>Any properly identified employee of the Animal and Plant Health Inspection Service is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to destroy, or otherwise dispose of regulated articles as provided in sections 414 and 421 of the Plant Protection Act (7 U.S.C. 7714 and 7731).

**§ 301.38-1 Definitions.**

In this subpart the following definitions apply:

**Administrator.** The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

**Animal and Plant Health Inspection Service (APHIS).** The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

**Black stem rust.** The disease commonly known as the black stem rust of grains (*Puccinia graminis*).

**Certificate.** A document in which an inspector, or a person operating under a compliance agreement, affirms that a specified regulated article has met the criteria in § 301.38-5(b) of this subpart and may be moved interstate to any destination.

**Clonally propagated.** Reproduced asexually through cuttings, tissue culture, suckers, or crown division. For the purposes of this subpart, a *Berberis* plant will be considered clonally propagated only if its parent stock is, or was derived from, a seed-propagated black stem rust-resistant plant of more than 2 years' growth.

**Compliance agreement.** A written agreement between a State that is a protected area or that encompasses a protected area and a person who moves regulated articles interstate, or in a non-protected area between APHIS and such person, in which that person agrees to comply with this subpart.

**Departmental permit.** A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes, and that the regulated article is eligible for interstate movement under the conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the introduction of rust-susceptible varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia* into protected areas.

**Inspector.** Any APHIS employee or other person authorized by the Administrator in accordance with law to enforce this subpart.

**Interstate.** From any State into or through any other State.

**Limited permit.** A document issued by an inspector to allow the interstate movement into or through a protected area of regulated articles not eligible for certification under this subpart to a specified destination outside the protected area.

**Moved (movement, move).** Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved. "Movement" and "move" shall be construed in accordance with this definition.

**Person.** Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

**Protected area.** Those States or counties designated in § 301.38-3(d) of this subpart.

**Rust-resistant plants.** All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and their progeny, that have proven resistant to black stem rust during testing by the United States Department of Agriculture,<sup>2</sup> and that are listed as rust-resistant under § 301.38-2 (a)(1) and (a)(2).

**Rust-susceptible plants.** All plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* not listed as rust-resistant under § 301.38-2 (a)(1) and (a)(2).

**Regulated article.** Any article listed in § 301.38-2 (a)(1) through (a)(3) of this subpart or otherwise designated as a regulated article in accordance with § 301.38-2(a)(4) of this subpart.

**Seedling.** Any plant of the genera *Berberis*, *Mahoberberis*, and *Mahonia*

<sup>2</sup>Testing is performed by the Agricultural Research Service of USDA as follows: In a greenhouse, the suspect plant, or test subject, is placed under a screen with a control plant, i.e., a known rust-susceptible variety of *Berberis*, *Mahoberberis*, or *Mahonia*. Infected wheat stems, a primary host of black stem rust, are placed on top of the screen. The plants are moistened and maintained in 100% humidity, causing the spores to swell and fall on the plants lying under the screen. The plants are then observed for 7 days at 20-80% relative humidity. This test procedure is repeated 12 times. If in all 12 tests, the rust-susceptible plant shows signs of infection after 7 days and the test plants do not, USDA will declare the test plant variety rust-resistant. The tests must be performed on new growth, just as the leaves are unfolding.

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grown from seed and having less than 2 years' growth.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

*Two years' growth.* The growth of a plant during all growing seasons of 2 successive calendar years.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989; 67 FR 8178, Feb. 22, 2002; 71 FR 5778, Feb. 3, 2006]

§ 301.38-2 Regulated articles.

(a) The following are regulated articles:<sup>3</sup>

(1) All plants, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Berberis* species and varieties.

*B. aggregata*×*B. wilsoniae* 'Pirate King'  
*B.* 'Amstelveen'  
*B. aridocalida*  
*B. beaniana*  
*B. buxifolia*  
*B. buxifolia nana*  
*B. calliantha*  
*B. candidula*  
*B. candidula* 'Amstelveen'  
*B.* *candidula*×*B. verruculosa* 'Amstelveen'  
*B. cavallieri*  
*B. chenaulti*  
*B. chenaulti* 'Apricot Queen'  
*B. circumserrata*  
*B. concinna*  
*B. coxii*  
*B. darwini*  
*B. dasystachya*  
*B. dubia*  
*B. feddeana*  
*B. formosana*  
*B. franchetiana*  
*B. gagnepainii*  
*B. gagnepaini* 'Chenault'  
*B. gilgiana*  
*B. gladwynensis*  
*B. gladwynensis* 'William Penn'  
*B. gyalica*  
*B. heterophylla*  
*B. horvathi*  
*B. hybrido-gagnepaini*  
*B. insignis*

*B. integerrima* 'Wallichs Purple'  
*B. julianae*  
*B. julianae* 'Nana'  
*B. julianae* 'Spring Glory'  
*B. koreana*  
*B. koreana*×*B. thunbergii* hybrid *Bailse*  
*B. koreana*×*B. thunbergii* hybrid *Tara*  
*B. lempergiana*  
*B. lepidifolia*  
*B. linearifolia*  
*B. linearifolia* var. 'Orange King'  
*B. lologensis*  
*B. lologensis* 'Mystery Fire'  
*B. manipurana*  
*B. media* 'Park Jewel'  
*B. media* 'Red Jewel'  
*B. mentorensis*  
*B. pallens*  
*B. poirettii* 'BJG 073', 'MTA'  
*B. potanini*  
*B. Renton*  
*B. replicata*  
*B. sanguinea*  
*B. sargentiana*  
*B. sikkimensis*  
*B. soulieana* 'Claret Cascade'  
*B. stenophylla*  
*B. stenophylla diversifolia*  
*B. stenophylla gracilis*  
*B. stenophylla irwini*  
*B. stenophylla nana compacta*  
*B. taliensis*  
*B. telomaica artisepala*  
*B. thunbergii*  
*B. thunbergii* 'Admiration'  
*B. thunbergii* 'Antares'  
*B. thunbergii argenteo marginata*  
*B. thunbergii atropurpurea*  
*B. thunbergii atropurpurea erecta*  
*B. thunbergii atropurpurea erecta Marshalli*  
*B. thunbergii atropurpurea* 'Golden Ring'  
*B. thunbergii atropurpurea* 'Intermedia'  
*B. thunbergii atropurpurea* 'Knight Burgundy'  
*B. thunbergii atropurpurea nana*  
*B. thunbergii atropurpurea* 'Redbird'  
*B. thunbergii atropurpurea* 'Rose Glow'  
*B. thunbergii aurea*  
*B. thunbergii* 'Aurea Nana'  
*B. thunbergii* 'Bagatelle'  
*B. thunbergii* 'Bailgreen' (Jade Carousel<sup>TM</sup>)  
*B. thunbergii* 'Bailone'  
*B. thunbergii* 'Bailone' (Ruby Carousel<sup>®</sup>)

<sup>3</sup>Permit and other requirements for the interstate movement of black stem rust organisms are contained in part 330 of this chapter.

*B. thunbergii* 'Bailtwo'  
*B. thunbergii* 'Bailtwo' (Burgundy Carousel<sup>®</sup>)  
*B. thunbergii* 'Bonanza Gold'  
*B. thunbergii* 'Concorde'  
*B. thunbergii* 'Crimson Ruby'  
*B. thunbergii* 'Crimson Pygmy'  
*B. thunbergii* 'Criruzam' Crimson Ruby<sup>™</sup>  
*B. thunbergii* 'Dwarf Jewell'  
*B. thunbergii erecta*  
*B. thunbergii* 'globe'  
*B. thunbergii* 'golden'  
*B. thunbergii* 'Golden Carpet'  
*B. thunbergii* 'Golden Devine'  
*B. thunbergii* 'Golden Pygmy'  
*B. thunbergii* 'Golden Rocket'  
*B. thunbergii* 'Golden Ruby'  
*B. thunbergii* 'Green Carpet'  
*B. thunbergii* 'Harlequin'  
*B. thunbergii* 'Helmond Pillar'  
*B. thunbergii* 'Kobold'  
*B. thunbergii* 'Lime Glow'  
*B. thunbergii* 'Lustre Green'  
*B. thunbergii* 'Maria'  
*B. thunbergii maximowiczii*  
*B. thunbergii* 'Midruzam' Midnight Ruby<sup>™</sup>  
*B. thunbergii minor*  
*B. thunbergii* 'Monlers'  
*B. thunbergii* 'Monomb'  
*B. thunbergii* 'Monry'  
*B. thunbergii* 'Painter's Palette'  
*B. thunbergii* 'Pink Queen'  
*B. thunbergii pluriflora*  
*B. thunbergii* 'Pow Wow'  
*B. thunbergii* 'Red Carpet'  
*B. thunbergii* 'Red Rocket'  
*B. thunbergii* 'Rosy Rocket'  
*B. thunbergii* 'Royal Burgundy'  
*B. thunbergii* 'Royal Cloak'  
*B. thunbergii* 'Sparkle'  
*B. thunbergii* 'Talago'  
*B. thunbergii* 'Thornless'  
*B. thunbergii* 'Tiny Gold'  
*B. thunbergii* 'Upright Jewell'  
*B. thunbergii variegata*  
*B. thunbergii xanthocarpa*  
*B. thunbergii* 'Bailsel' (Golden Carousel<sup>®</sup>)  
*B. thunbergii* 'Tara' (Emerald Carousel<sup>®</sup>)  
*B. triacanthophora*  
*B. triculosa*  
*B. verruculosa*  
*B. virgatorum*  
*B. workingensis*  
*B. xanthoxylon*  
*B. xcarminea* 'Pirate King'

*B. xfrickartii* 'Amstelveen'

(2) All plants, seedlings, seeds, fruits, and other plant parts capable of propagation from the following rust-resistant *Mahoberberis* and *Mahonia* species and varieties, except *Mahonia* cuttings for decorative purposes:

(i) Genus *Mahoberberis*:

*M. aquifolium* 'Smaragd'

*M. aquifolium* 'Smaragd'

*M. aquifolium* 'Smaragd'

*M. miethkeana*

*M. x* 'Magic'

(ii) Genus *Mahonia*:

*M. amplexans*

*M. aquifolium*

*M. aquifolium atropurpurea*

*M. aquifolium compacta*

*M. aquifolium compacta* 'John Muir'

*M. aquifolium* 'Donewell'

*M. aquifolium* 'Kings Ransom'

*M. aquifolium* 'Orangee Flame'

*M. aquifolium* 'Undulata'

*M. aquifolium* 'Winter Sun'

*M. 'Arthur Menzies'*

*M. bealei*

*M. dictyota*

*M. fortunei*

*M. 'Golden Abundance'*

*M. japonica*

*M. japonica* x *M. lomariifolia* 'Charity'

*M. lomariifolia*

*M. nervosa*

*M. pinnata*

*M. pinnata* 'Ken Hartman'

*M. piperiana*

*M. pumila*

*M. repens*

*M. x media* 'Charity'

*M. x media* 'Winter Sun'

(3) All plants, seeds, fruits, and other plant parts capable of propagation from rust-susceptible species and varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, except *Mahonia* cuttings for decorative purposes.

(4) Any other product or article not listed in paragraphs (a)(1) through (a)(3) of this section that an inspector determines presents a risk of spread of black stem rust. The inspector must notify the person in possession of the product or article that it is subject to the provisions of this subpart.

(b) A person may request that an additional rust-resistant variety be added to paragraph (a)(1) or (a)(2) of this section. The person requesting that a



rust-resistant variety be added to paragraph (a)(1) or (a)(2) of this section must provide APHIS with a description of the variety, including a written description and color pictures that can be used by an inspector to clearly identify the variety and distinguish it from other varieties.

(Approved by the Office of Management and Budget under control number 0579-0186)

[67 FR 8179, Feb. 22, 2002, as amended at 71 FR 5778, Feb. 3, 2006]

**§ 301.38-3 Protected areas.**

(a) The Administrator may designate as a protected area in paragraph (d) of this section any State that has eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative Federal-State eradication program. In addition, the State must employ personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38-5, and maintain and enforce an inspection program under which every plant nursery within the State is inspected at least once each year to ensure that they are free of rust-susceptible plants. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and that the plants are true to type. Plants that do not meet this criteria must be destroyed.

(b) The Administrator may designate as a protected area any county within a State, rather than the entire State, if areas within the State have eradicated rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* under the cooperative Federal-State program, and;

(1) The State employs personnel with responsibility for the issuance and withdrawal of certificates in accordance with § 301.38-5;

(2) The State is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles, as determined by the Administrator; and

(3) The State maintains and enforces an inspection program under which

every plant nursery within the county is inspected at least once each year to ensure that plant nurseries within that area are free of rust-susceptible plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia*. During the requisite nursery inspections, all nursery stock shall be examined to determine that it consists only of rust-resistant varieties of the genera *Berberis*, *Mahoberberis*, and *Mahonia*, and that the plants are true to type. Plants that do not meet this criteria must be destroyed.

(c) All seed used to propagate plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* in protected areas, and all seed used to propagate plants of the genera *Berberis*, *Mahoberberis*, and *Mahonia* that are certified as rust-resistant for interstate movement into protected areas, must be produced at properties where a State inspector has verified that no wild or domesticated rust-susceptible plants are growing at or within one-half mile of the property.<sup>4</sup>

(d) The following are designated as protected areas:

(1) The States of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, North Dakota, Ohio, Pennsylvania, South Dakota, West Virginia, Wisconsin, and Wyoming.

<sup>4</sup>Persons performing the inspections must be able to recognize rust-susceptible varieties of *Berberis*, *Mahoberberis*, and *Mahonia*. Inspectors must work side by side, 10 to 20 feet apart, and walk outward away from the property a distance of one-half mile measured from the edge of the property, and observe all plants growing in the half-mile band. The distance between the inspectors may vary within this range, depending upon the visibility of the plant growth. In areas with low brush and flat terrain, the inspectors may be the maximum distance of 20 feet apart if they can observe all plants growing within 10 feet of them. In areas of high plant growth or hilly terrain, the inspectors must be closer together due to limited or obstructed visibility. Inspectors must observe all plants growing between themselves and the mid-point of the distance between themselves and the next inspector. This process must be repeated so that the entire band, measured from the border of the property to the circumference of an imaginary circle having the property as its mid-point, is visually inspected in this manner.

(2) The following counties in the State of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, Yakima.

(e) Each State that is a protected area or that encompasses a protected area must submit annually to the Administrator a written statement, signed by an inspector, assuring APHIS that all nursery inspections have been performed in accordance with this section. The statement must be submitted by January 1st of each year, and must include a list of the nurseries inspected and found free of rust-susceptible plants.

(f) The Administrator may remove a protected area from the list of designated protected areas in paragraph (d) of this section if he or she determines that it no longer meets the criteria of paragraph (a) or (b)(1) through (3) of this section. A hearing will be held to resolve any conflict as to any material fact. Rules of practice for the hearing shall be adopted by the Administrator.

[54 FR 32791, Aug. 10, 1989, as amended at 55 FR 29558, July 20, 1990; 57 FR 3118, Jan. 28, 1992; 71 FR 5778, Feb. 3, 2006]

#### § 301.38-4 Interstate movement of regulated articles.

(a) *Non-protected areas.* Interstate movement of regulated articles into or through any State or area that is not designated as a protected area under § 301.38-3(d) is allowed without restriction under this subpart.

(b) *Protected areas.* (1) *Prohibited movement.* The following regulated articles are prohibited from moving interstate into or through any protected area:

(i) All rust-susceptible *Berberis*, *Mahoberberis*, and *Mahonia* plants, seeds, fruits, and other plant parts capable of propagation, except *Mahonia* cuttings for decorative purposes.

(ii) All seed-propagated plants of the *Berberis* species and varieties designated as rust-resistant in § 301.38-2(a)(1) of this subpart that are of less than 2 years' growth, and any seeds, fruits, and other plant parts capable of propagation from such plants.

(2) *Restricted movement.* The following regulated articles may be moved interstate into or through a protected area with a certificate issued and attached in accordance with §§ 301.38-5 and 301.38-7 of this subpart:

(i) Seed-propagated plants of at least 2 years' growth, clonally propagated plants of any age, seeds, fruits, and other plant parts capable of propagation of the *Berberis* species and varieties designated as rust-resistant in § 301.38-2(a)(1) of this subpart;

(ii) Plants, seeds, fruits, and other plant parts capable of propagation of the *Mahoberberis* and *Mahonia* species and varieties designated as rust-resistant in § 301.38-2(a)(2) of this subpart.

(c) An inspector may issue a limited permit to allow a regulated article not eligible for certification under § 301.38-4(b)(2) to move interstate into or through a protected area to a specified destination that is stated in the permit and is outside the protected area, if the requirements of all other applicable Federal domestic plant quarantines are met. A regulated article moved interstate under a limited permit must be placed in a closed sealed container that prevents unauthorized removal of the regulated article, and that remains sealed until the regulated article reaches the final destination stated in the permit. At the final destination, the sealed container must be opened only in the presence of an inspector or with the authorization of an inspector obtained expressly for that shipment.

(d) The United States Department of Agriculture may move any regulated article interstate into or through a protected area in accordance with the conditions determined necessary to prevent the introduction or spread of black stem rust in protected areas, as specified in a Departmental permit issued for this purpose.

[54 FR 32791, Aug. 10, 1989, as amended at 67 FR 8180, Feb. 22, 2002; 71 FR 5778, Feb. 3, 2006]

#### § 301.38-5 Assembly and inspection of regulated articles: issuance and cancellation of certificates.

(a) Any person, other than a person authorized to issue certificates under paragraph (c) of this section, who desires to move interstate a regulated article that must be accompanied by a

certificate under § 301.38-4(b), shall, as far in advance of the desired interstate movement as possible (and no less than 48 hours before the desired interstate movement), request an inspector<sup>5</sup> to issue a certificate. To expedite the issuance of a certificate, an inspector may direct that the regulated articles be assembled in a manner that facilitates inspection.

(b) An inspector may issue a certificate for the interstate movement of a regulated article if he or she:

(1) Determines, upon examination, that the regulated article may be moved interstate in accordance with this subpart; and

(2) Determines that the regulated article may be moved interstate in accordance with all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates for interstate movement of regulated articles may be issued by an inspector to a person operating under a compliance agreement for use with subsequent shipments of regulated articles to facilitate their movement. A person operating under a compliance agreement must make the determinations set forth in paragraph (b) of this section before shipping any regulated articles.

(d) Any certificate that has been issued may be withdrawn by an inspector, orally or in writing, if he or she determines that the holder of the certificate has not complied with the conditions of this subpart for the use of the certificate. If the withdrawal is oral, the inspector will confirm the withdrawal and the reasons for the withdrawal, in writing, within 20 days of oral notification of the withdrawal. Any person whose certificate has been withdrawn may appeal the decision, in writing within 10 days after receiving written notification of the withdrawal.

<sup>5</sup>Services of an inspector may be requested by contacting a local APHIS office (listed in telephone directories under Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine). The addresses and telephone numbers of local offices may also be obtained by writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

The appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. A hearing will be held to resolve any conflict as to any material fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The certificate will remain withdrawn pending decision of the appeal.

[54 FR 32791, Aug. 10, 1989, as amended at 59 FR 67608, Dec. 30, 1994; 67 FR 8180, Feb. 22, 2002]

#### **§ 301.38-6 Compliance agreements and cancellation.**

(a) Any State may enter into a written compliance agreement with any person who grows or handles regulated articles in a protected area, or moves interstate regulated articles from a protected area, under which that person agrees to comply with this subpart, to provide inspectors with information concerning the source of any regulated articles acquired each year, and to prevent the unauthorized use of certificates issued for future use under the compliance agreement.<sup>6</sup>

(b) A compliance agreement may be cancelled by an inspector, orally or in writing, whenever he or she determines that the person who has entered into the compliance agreement has failed to comply with the agreement or this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed, in writing, within 20 days of oral notification of the cancellation. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts

<sup>6</sup>In non-protected areas, compliance agreements may be arranged by contacting a local office of the Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine, or by writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. A hearing will be held to resolve any conflict as to any material fact. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. In a non-protected area, appeal shall be made to the Administrator. The Administrator shall adopt rules of practice for the hearing. The compliance agreement will remain cancelled pending decision of the appeal.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989, as amended at 57 FR 3118, Jan. 28, 1992; 59 FR 67608, Dec. 30, 1994]

#### § 301.38-7 Attachment and disposition of certificates.

(a) The certificate required for the interstate movement of a regulated article must, at all times during the interstate movement, be attached to the outside of the container containing the regulated article except as follows:

(1) The certificate may be attached to the regulated article itself if it is not in container; or

(2) The certificate may be attached to the accompanying waybill or other shipping document if the regulated article is identified and described on the certificate or waybill.

(b) The carrier must furnish the certificate to the consignee at the destination of the regulated article.

#### § 301.38-8 Costs and charges.

The services of an inspector<sup>4</sup> during normal business hours, Monday through Friday, 8 a.m. to 4:30 p.m., will be furnished without cost to persons requiring the services. The United States Department of Agriculture will not be responsible for any other costs or charges.

[54 FR 32791, Aug. 10, 1989; 54 FR 38494, Sept. 18, 1989]

### Subpart—Gypsy Moth

SOURCE: 58 FR 39423, July 23, 1993, unless otherwise noted.

#### § 301.45 Notice of quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* Pursuant to the provisions of , sections 411, 412, 414, 431, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, 7751, and 7754), the Secretary of Agriculture hereby quarantines the States of Connecticut, Delaware, District of Columbia, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin in order to prevent the spread of the gypsy moth, *Lymantria dispar* (Linnaeus), a dangerous insect injurious to forests and shade trees and not theretofore widely prevalent or distributed within or throughout the United States; and establishes regulations governing the interstate movement from generally infested areas of the quarantined States of regulated articles and outdoor household articles defined in § 301.45-1.

(b) *Restrictions on the interstate movement of regulated articles and outdoor household articles.* No common carrier or other person may move interstate from any generally infested area any regulated article or outdoor household article except in accordance with the conditions prescribed in this subpart.

[58 FR 39423, July 23, 1993, as amended at 62 FR 29287, May 30, 1997; 63 FR 38280, July 16, 1998; 66 FR 21050, Apr. 27, 2001; 66 FR 37114, July 17, 2001]

#### § 301.45-1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (APHIS).

*Associated equipment.* Articles associated and moved with mobile homes and recreational vehicles, such as, but not

limited to, awnings, tents, outdoor furniture, trailer blocks, and trailer skirts.

**Bark.** The tough outer covering of the woody stems of trees, shrubs, and other woody plants as distinguished from the cambium and inner wood.

**Bark products.** Products containing pieces of bark including bark chips, bark nuggets, bark mulch, and bark compost.

**Certificate.** A document issued by an inspector, or by a qualified certified applicator or any other person operating in accordance with a compliance agreement, to allow the movement of regulated articles to any destination.

**Compliance agreement.** A written agreement between a person engaged in growing, handling, or moving regulated articles, and APHIS, wherein the former agrees to comply with the requirements of the compliance agreement.

**Effectively diminishing.** An eradication program is considered to be effectively diminishing the gypsy moth population of an area if the results of two successive annual Federal or State delimiting trapping surveys of the area conducted in accordance with Section II, "Survey Procedures—Gypsy Moth," of the Gypsy Moth Treatment Manual show that the average number of gypsy moths caught per trap in the second delimiting survey (when comparable geographical areas and trapping densities are used) is: (1) Less than 10, and (2) less than the average number of gypsy moths caught per trap in the first survey.

**Eradication program.** A program that uses pesticide application, biological controls, or other methods with the goal of eliminating gypsy moth from a particular area.

**General infestation.** (1) The detection of gypsy moth egg masses through visual inspection by an inspector during a 10-minute walk through the area; however, it does not include the presence of gypsy moth egg masses which are found as a result of hitchhiking on transitory means of conveyance; or

(2) The detection of gypsy moth through multiple catches of adult gypsy moths at multiple trapping locations in the area over a period of 2 or more consecutive years, if the Admin-

istrator determines, after consulting with the State plant regulatory official, that gypsy moth is established in the area.

**Generally infested area.** Any State, or portion thereof, listed as a generally infested area in §301.45-3 or temporarily designated as a generally infested area in accordance with §301.45-2(c).

**Gypsy moth.** The live insect known as the gypsy moth, *Lymantria dispar* (Linnaeus), in any life stage (egg, larva, pupa, adult).

**Inspector.** Any employee of APHIS, a State government, or any other person, authorized by the Administrator in accordance with law to enforce the provisions of the quarantine and regulations in this subpart.

**Interstate.** From any State into or through any other State.

**Limited permit.** A document issued by an inspector to allow the interstate movement of regulated articles to a specified destination.

**Mobile home.** Any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

**Move (movement, moved).** Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means. "Movement" and "moved" shall be construed in accordance with this definition.

**Outdoor household articles.** Articles associated with a household that have been kept outside the home such as awnings, barbecue grills, bicycles, boats, dog houses, firewood, garden tools, hauling trailers, outdoor furniture and toys, recreational vehicles and associated equipment, and tents.

**Person.** Any individual, partnership, corporation, company, society, association, or other organized group.

**Qualified certified applicator.** Any individual (1) certified pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (86 Stat. 983; 7 U.S.C. 136b) as a certified commercial applicator in a category allowing use of the restricted pesticides Spray N Kill (EPA Registration No. 8730-30), Ficam W (EPA Registration No. 45639-1), and

acephate (Orthene®); (2) who has attended and completed a workshop approved by the Administrator on the identification and treatment of gypsy moth life stages on outdoor household articles and mobile homes; and (3) who has entered into a compliance agreement in accordance with § 301.45-6 of this part for the purpose of inspecting, treating, and issuing certificates for the movement of outdoor household articles and mobile homes.<sup>1</sup>

*Recreational vehicles.* Highway vehicles, including pickup truck campers, one-piece motor homes, and travel trailers, designed to serve as temporary places of dwelling.

*Regulated articles.* (1) Trees without roots (e.g., Christmas trees), trees with roots, and shrubs with roots and persistent woody stems, unless they are greenhouse grown throughout the year.

(2) Logs, pulpwood, and bark and bark products.

(3) Mobile homes and associated equipment.

(4) Any other products, articles, or means of conveyance, of any character whatsoever, when it is determined by an inspector that any life stage of gypsy moth is in proximity to such articles and the articles present a high risk of artificial spread of gypsy moth infestation and the person in possession thereof has been so notified.

*State.* Any State, Territory, or District of the United States including Puerto Rico.

*Treatment manual.* The provisions currently contained in the Gypsy Moth Program Manual.<sup>2</sup>

<sup>1</sup>Names of qualified certified applicators and plant regulatory officials for the States and Territories of the United States are available upon request from the regional offices of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, or from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>2</sup>Pamphlets containing such provisions are available upon request to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236. Relevant portions of the Gypsy Moth Program Manual

*Under the direction of.* Monitoring treatments to assure compliance with the requirements in this subpart.

*Under the direct supervision of a qualified certified applicator.* An inspection or treatment is considered to be applied under the direct supervision of a qualified certified applicator if the inspection or treatment is performed by a person acting under the instructions of a qualified certified applicator who is available if and when needed, even though such qualified certified applicator is not physically present at the time and place the inspection or treatment occurred.

[58 FR 39423, July 23, 1993, as amended at 59 FR 67608, Dec. 30, 1994; 67 FR 8464, Feb. 25, 2002; 70 FR 33268, June 7, 2005; 71 FR 40878, July 19, 2006]

**§ 301.45-2 Authorization to designate and terminate designation of generally infested areas.**

(a) Generally infested areas. The Administrator shall list as generally infested areas in § 301.45-3 each State or each portion thereof in which a gypsy moth general infestation has been found by an inspector, or each portion of a State which the Administrator deems necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities; Except that, an area shall not be listed as a generally infested area if the Administrator has determined that:

(1) The area is subject to a gypsy moth eradication program conducted by the Federal government or a State government in accordance with the Integrated Pest Management (IPM) alternative of the Final Environmental Impact Statement (FEIS) on Gypsy Moth Suppression and Eradication Projects that was filed with the United States Environmental Protection Agency on March 18, 1985; and

(2) State or Federal delimiting trapping surveys conducted in accordance with Section II, "Survey Procedures—Gypsy Moth" of the Gypsy Moth Treatment Manual show that the average number of gypsy moths caught per trap is less than 10 and that the trapping

are published as an appendix to these regulations.

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surveys show that the eradication program is effectively diminishing the gypsy moth population of the area.

(b) Less than an entire State will be designated as a generally infested area only if the Administrator has determined that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and,

(2) The designation of less than the entire State as a generally infested area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth.

(c) Temporary designation of areas as generally infested areas. The Administrator or an inspector may temporarily designate any area in any State as a generally infested area in accordance with the criteria specified in paragraph (a) of this section. An inspector will give written notice of the designation to the owner or person in possession of the area and thereafter, the interstate movement of any regulated article from such areas is subject to the applicable provisions of this subpart. As soon as practicable, each generally infested area will be added to the list in §301.45-3 or the designation will be terminated by the Administrator or an authorized inspector, and notice thereof shall be given to the owner or person in possession of the areas.

(d) Termination of designation as a generally infested area. The Administrator shall terminate the designation of any area as a generally infested area whenever the Administrator determines that the area no longer requires designation under the criteria specified in paragraph (a) of this section.

**§301.45-3 Generally infested areas.**

(a) The areas described below are designated as generally infested areas:

**CONNECTICUT**

The entire State.

**DELAWARE**

The entire State.

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**DISTRICT OF COLUMBIA**

The entire district.

**ILLINOIS**

*Lake County.* The entire county.

**INDIANA**

*Allen County.* The entire county.

*De Kalb County.* The entire county.

*Elkhart County.* The entire county.

*LaGrange County.* The entire county.

*Noble County.* The entire county.

*Porter County.* The entire county.

*Steuben County.* The entire county.

**MAINE**

*Androscoggin County.* The entire county.

*Aroostook County.* The townships of Bancroft, Benedicta, Crystal, Island Falls, Macwahoc Plantation, Molunkus, North Yarmouth Academy Grant, Reed Plantation, Sherman, Silver Ridge, Upper Molunkus, Weston, and 1 R5 WELS.

*Cumberland County.* The entire county.

*Franklin County.* The townships of Avon, Carthage, Chesterville, Coplin Plantation, Crockertown, Dallas Plantation, Davis, Lang, Farmington, Freeman, Industry, Jay, Jerusalem, Kingfield, Madrid, Mount Abraham, New Sharon, New Vineyard, Perkins, Phillips, Rangeley, Rangeley Plantation, Redington, Salem, Sandy River Plantation, Strong, Temple, Washington, Weld, Wilton, Wyman, 6, D and E.

*Hancock County.* The entire county.

*Kennebec County.* The entire county.

*Knox County.* The entire county.

*Lincoln County.* The entire county.

*Oxford County.* The townships of Adamstown, Albany, Andover, Andover North, Andover West, Batchelders Grant, Bethel, Brownfield, Buckfield, Byron, Canton, Denmark, Dixfield, Fryeburg, Gilead, Grafton, Greenwood, Hanover, Hartford, Hebron, Hiram, Lincoln Plantation, Lovell, Lower Cupsuptic, Magalloway Plantation, Mason Plantation, Mexico, Milton Plantation, Newry, Norway, Oxford, Paris, Parkerstown, Peru, Porter, Richardsontown, Riley, Roxbury, Rumford, Stoneham, Stow, Sumner, Sweden, Upton, Waterford, Woodstock, C, and C Surplus.

*Penobscot County.* The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Burlington, Carmel, Carroll Plantation, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Drew Plantation, E. Millinocket, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Plantation, Greenbush, Greenfield, Grindstone, Hampden, Hermon, Hersey Town, Holden, Hopkins Academy Grant, Howland, Hudson, Indian Purchase, Kenduskeag, Kingman, Lagrange, Lakeville, Lee, Levant, Lincoln, Long A, Lowell, Mattamiscontis, Mattawamkeag, Maxfield, Medway, Milford, Millinocket, Newburgh, Newport, Old Town City, Orono, Orrington, Passadumkeag, Plymouth, Prentiss Plantation, Seboesis Plantation, Soldiertown, Springfield, Stacyville, Stetson, Summit, Veazie, Webster Plantation, Winn, Woodville, AR 7, AR 8, AR 9, 1 ND, 3 R1 NBPP, 1 R6 WELS, 1 R8 WELS, 2 R8 NWP, 2 R9 NWP, 3 R9 NWP, 5 R1 NBPP, and 2 R8 WELS.

*Piscataquis County.* The townships of Abbott, Atkinson, Barnard, Blanchard Plantation, Bowerbank, Brownville, Dover-Foxcroft, Guilford, Kingsbury Plantation, Lakeview Plantation, Medford, Milo, Monson, Orneville, Parkman, Sangerville, Sebec, Williamsburg, Willimantic, Willington, 1 R9, 2 R9 WELS, 4 R9 NWP, and 5 R9 NWP.

*Sagadahoc County.* The entire county.

*Somerset County.* The townships of Anson, Athens, Bald Mountain, Bingham, Bowtown, Brighton Plantation, Cambridge, Canaan, Caratunk, Carrying Place, Carrying Place Town, Concord Plantation, Cornville, Dead River, Detroit, Embden, Fairfield, Harmony, Hartland, Highland Plantation, Lexington Plantation, Madison, Mayfield, Mercer, Moscow, Moxie Gore, New Portland, Norridgewock, Palmyra, Pittsfield, Pleasant Ridge Plantation, Ripley, Skowhegan, Smithfield, Solon, St. Albans, Starks, The Forks Plantation, and West Forks Plantation.

*Waldo County.* The entire county.

*Washington County.* The entire county.

*York County.* The entire county.

#### MARYLAND

The entire State.

#### MASSACHUSETTS

The entire State.

#### MICHIGAN

The entire State.

#### NEW HAMPSHIRE

The entire State.

#### NEW JERSEY

The entire State.

#### NEW YORK

The entire State.

#### NORTH CAROLINA

*Currituck County.* The entire county.

*Dare County.* The area bounded by a line beginning at the intersection of State Road 1208 and Roanoke Sound; then easterly along this road to its junction with State Road 1206; then southerly along this road to its intersection with U.S. Highway Business 158; then easterly along an imaginary line to its intersection with the Atlantic Ocean; then northwesterly along the coastline to its intersection with the Dare-Currituck County line; then westerly along this county line to its intersection with the Currituck Sound; then southeasterly along this sound to the point of beginning.

#### OHIO

*Ashland County.* The entire county.

*Ashtabula County.* The entire county.

*Belmont County.* The entire county.

*Carroll County.* The entire county.

*Columbiana County.* The entire county.

*Coshocton County.* The entire county.

*Cuyahoga County.* The entire county.

*Defiance County.* The entire county.

*Delaware County.* The entire county.

*Erie County.* The entire county.

*Fairfield County.* The entire county.

*Franklin County.* The entire county.

*Fulton County.* The entire county.

*Geauga County.* The entire county.

*Guernsey County.* The entire county.

*Harrison County.* The entire county.

*Henry County.* The entire county.

*Hocking County.* The entire county.

*Holmes County.* The entire county.

*Huron County.* The entire county.

*Jefferson County.* The entire county.

*Knox County.* The entire county.



*Lake County.* The entire county.  
*Licking County.* The entire county.  
*Lorain County.* The entire county.  
*Lucas County.* The entire county.  
*Mahoning County.* The entire county.  
*Medina County.* The entire county.  
*Monroe County.* The entire county.  
*Morgan County.* The entire county.  
*Muskingum County.* The entire county.  
*Noble County.* The entire county.  
*Ottawa County.* The entire county.  
*Perry County.* The entire county.  
*Portage County.* The entire county.  
*Richland County.* The entire county.  
*Sandusky County.* The entire county.  
*Seneca County.* The entire county.  
*Stark County.* The entire county.  
*Summit County.* The entire county.  
*Trumbull County.* The entire county.  
*Tuscarawas County.* The entire county.  
*Washington County.* The entire county.  
*Wayne County.* The entire county.  
*Williams County.* The entire county.  
*Wood County.* The entire county.

## PENNSYLVANIA

The entire State.

## RHODE ISLAND

The entire State.

## VERMONT

The entire State.

## VIRGINIA

*City of Alexandria.* The entire city.  
*City of Bedford.* The entire city.  
*City of Buena Vista.* The entire city.  
*City of Charlottesville.* The entire city.  
*City of Chesapeake.* The entire city.  
*City of Colonial Heights.* The entire city.  
*City of Danville.* The entire city.  
*City of Emporia.* The entire city.  
*City of Fairfax.* The entire city.  
*City of Falls Church.* The entire city.  
*City of Franklin.* The entire city.  
*City of Fredericksburg.* The entire city.  
*City of Hampton.* The entire city.  
*City of Harrisonburg.* The entire city.  
*City of Hopewell.* The entire city.  
*City of Lexington.* The entire city.  
*City of Lynchburg.* The entire city.  
*City of Manassas.* The entire city.  
*City of Manassas Park.* The entire city.  
*City of Newport News.* The entire city.  
*City of Norfolk.* The entire city.  
*City of Petersburg.* The entire city.  
*City of Poquoson.* The entire city.

*City of Portsmouth.* The entire city.  
*City of Richmond.* The entire city.  
*City of Roanoke.* The entire city.  
*City of Salem.* The entire city.  
*City of South Boston.* The entire city.  
*City of Staunton.* The entire city.  
*City of Suffolk.* The entire city.  
*City of Virginia Beach.* The entire city.  
*City of Waynesboro.* The entire city.  
*City of Williamsburg.* The entire city.  
*City of Winchester.* The entire city.  
*Accomack County.* The entire county.  
*Albemarle County.* The entire county.  
*Alleghany County.* The entire county.  
*Amelia County.* The entire county.  
*Amherst County.* The entire county.  
*Appomattox County.* The entire county.  
*Arlington County.* The entire county.  
*Augusta County.* The entire county.  
*Bath County.* The entire county.  
*Bedford County.* The entire county.  
*Botetourt County.* The entire county.  
*Brunswick County.* The entire county.  
*Buckingham County.* The entire county.  
*Campbell County.* The entire county.  
*Caroline County.* The entire county.  
*Charles City County.* The entire county.  
*Charlotte County.* The entire county.  
*Chesterfield County.* The entire county.  
*Clarke County.* The entire county.  
*Craig County.* The entire county.  
*Culpeper County.* The entire county.  
*Cumberland County.* The entire county.  
*Dinwiddie County.* The entire county.  
*Essex County.* The entire county.  
*Fairfax County.* The entire county.  
*Fauquier County.* The entire county.  
*Fluvanna County.* The entire county.  
*Frederick County.* The entire county.  
*Giles County.* The entire county.  
*Gloucester County.* The entire county.  
*Goochland County.* The entire county.  
*Greene County.* The entire county.  
*Greensville County.* The entire county.  
*Halifax County.* The entire county.  
*Hanover County.* The entire county.  
*Henrico County.* The entire county.  
*Highland County.* The entire county.  
*Isle of Wight County.* The entire county.  
*James City County.* The entire county.  
*King and Queen County.* The entire county.  
*King George County.* The entire county.  
*King William County.* The entire county.  
*Lancaster County.* The entire county.  
*Loudoun County.* The entire county.  
*Louisa County.* The entire county.  
*Lunenburg County.* The entire county.

**Animal and Plant Health Inspection Service, USDA**

**§ 301.45-3**

*Madison County.* The entire county.  
*Mathews County.* The entire county.  
*Mecklenburg County.* The entire county.  
*Middlesex County.* The entire county.  
*Nelson County.* The entire county.  
*New Kent County.* The entire county.  
*Northampton County.* The entire county.  
*Northumberland County.* The entire county.  
*Nottoway County.* The entire county.  
*Orange County.* The entire county.  
*Page County.* The entire county.  
*Pittsylvania County.* The entire county.  
*Powhatan County.* The entire county.  
*Prince Edward County.* The entire county.  
*Prince George County.* The entire county.  
*Prince William County.* The entire county.  
*Rappahannock County.* The entire county.  
*Richmond County.* The entire county.  
*Roanoke County.* The entire county.  
*Rockbridge County.* The entire county.  
*Rockingham County.* The entire county.  
*Shenandoah County.* The entire county.  
*Southampton County.* The entire county.  
*Spotsylvania County.* The entire county.  
*Stafford County.* The entire county.  
*Surry County.* The entire county.  
*Sussex County.* The entire county.  
*Warren County.* The entire county.  
*Westmoreland County.* The entire county.  
*York County.* The entire county.

**WEST VIRGINIA**

*Barbour County.* The entire county.  
*Berkeley County.* The entire county.  
*Braxton County.* The entire county.  
*Brooke County.* The entire county.  
*Calhoun County.* The entire county.  
*Doddridge County.* The entire county.  
*Gilmer County.* The entire county.  
*Grant County.* The entire county.  
*Greenbrier County.* The entire county.  
*Hampshire County.* The entire county.  
*Harrison County.* The entire county.  
*Hancock County.* The entire county.  
*Hardy County.* The entire county.  
*Jackson County.* The entire county.  
*Jefferson County.* The entire county.  
*Lewis County.* The entire county.  
*Marion County.* The entire county.  
*Marshall County.* The entire county.  
*Mineral County.* The entire county.

*Monongalia County.* The entire county.  
*Monroe County.* The entire county.  
*Morgan County.* The entire county.  
*Nicholas County.* The entire county.  
*Ohio County.* The entire county.  
*Pendleton County.* The entire county.  
*Pleasants County.* The entire county.  
*Pocahontas County.* The entire county.  
*Preston County.* The entire county.  
*Randolph County.* The entire county.  
*Ritchie County.* The entire county.  
*Taylor County.* The entire county.  
*Tucker County.* The entire county.  
*Tyler County.* The entire county.  
*Upshur County.* The entire county.  
*Webster County.* The entire county.  
*Wetzel County.* The entire county.  
*Wirt County.* The entire county.  
*Wood County.* The entire county.

**WISCONSIN**

*Adams County.* The entire county.  
*Brown County.* The entire county.  
*Calumet County.* The entire county.  
*Columbia County.* The entire county.  
*Dane County.* The entire county.  
*Dodge County.* The entire county.  
*Door County.* The entire county.  
*Florence County.* The entire county.  
*Fond du Lac County.* The entire county.  
*Forest County.* The entire county.  
*Green Lake County.* The entire county.  
*Jefferson County.* The entire county.  
*Juneau County.* The entire county.  
*Kenosha County.* The entire county.  
*Kewaunee County.* The entire county.  
*Langlade County.* The entire county.  
*Lincoln County.* The entire county.  
*Manitowoc County.* The entire county.  
*Marathon County.* The entire county.  
*Marinette County.* The entire county.  
*Marquette County.* The entire county.  
*Menominee County.* The entire county.  
*Milwaukee County.* The entire county.  
*Oconto County.* The entire county.  
*Oneida County.* The entire county.  
*Outagamie County.* The entire county.  
*Ozaukee County.* The entire county.  
*Portage County.* The entire county.  
*Racine County.* The entire county.  
*Rock County.* The entire county.  
*Sauk County.* The entire county.  
*Shawano County.* The entire county.  
*Sheboygan County.* The entire county.  
*Vilas County.* The entire county.  
*Walworth County.* The entire county.  
*Washington County.* The entire county.  
*Waukesha County.* The entire county.  
*Waupaca County.* The entire county.

*Waushara County.* The entire county.  
*Winnebago County.* The entire county.  
*Wood County.* The entire county.

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 62 FR 29287, May 30, 1997; 62 FR 36646, July 9, 1997; 63 FR 25748, May 11, 1998; 63 FR 38280, July 16, 1998; 64 FR 40510, July 27, 1999; 66 FR 37114, July 17, 2001; 67 FR 41810, June 20, 2002; 69 FR 31723, June 7, 2004; 71 FR 25064, Apr. 28, 2006; 71 FR 53547, Sept. 12, 2006; 71 FR 66830, Nov. 17, 2006]

**§301.45-4 Conditions governing the interstate movement of regulated articles and outdoor household articles from generally infested areas.**

(a) Regulated articles and outdoor household articles from generally infested areas. (1) A regulated article, except for an article moved in accordance with paragraph (c) of this section, shall not be moved interstate from any generally infested area into or through any area that is not generally infested unless a certificate or permit has been issued and attached to such regulated article in accordance with §§301.45-5 and 301.45-8.<sup>3</sup>

(2) An outdoor household article shall not be moved interstate from any generally infested area into or through any area that is not generally infested unless a certificate or OHA document has been issued and attached to such outdoor household article in accordance with §§301.45-5 and 301.45-8.

(b) A regulated article originating outside of any generally infested area may be moved interstate directly through any generally infested area without a certificate or permit if the point of origin of the article is clearly indicated by shipping documents, its identity has been maintained, and it has been safeguarded against infestation while in any generally infested area during the months of April through August. To be safeguarded, the article must be in an enclosed vehicle, or completely enclosed by a covering adequate to prevent access by gypsy moths, such as canvas, plastic, or closely woven cloth.

(c) A regulated article originating in a generally infested area may be moved interstate from a generally infested

area without a certificate if it complies with (1) or (2) of this paragraph:

(1) The article is moved by the U.S. Department of Agriculture for experimental or scientific purposes, and:

(i) Is moved pursuant to a permit issued for each article by the Administrator;

(ii) Is moved in accordance with conditions specified on the permit and found by the Administrator to be adequate to prevent the dissemination of the gypsy moth, i.e., conditions of treatment, processing, shipment, and disposal; and

(iii) Is moved with a tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, and with such tag or label bearing a permit number corresponding to the number of the permit issued for such article.

(2) The article is logs, pulpwood, or bark and bark products, and the person moving the article has attached a signed accurate statement to the waybill or other shipping documents accompanying the article stating that he or she has inspected the article in accordance with the Gypsy Moth Program Manual no more than 5 days prior to the date of movement and has found no life stages of gypsy moth on the article.

[58 FR 39423, July 23, 1993, as amended at 70 FR 33268, June 7, 2005; 71 FR 40878, July 19, 2006]

**§301.45-5 Issuance and cancellation of certificates, limited permits, and outdoor household article documents.**

(a) A certificate may be issued by an inspector for the movement of a regulated article or an outdoor household article (OHA) if the inspector determines that it is eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such article and:

(1) It has originated in noninfested premises in a generally infested area and has not been exposed to the gypsy moth while within the generally infested area; or

(2) The inspector inspects the article no more than 5 days prior to the date

<sup>3</sup>Requirements under all other applicable Federal domestic plant quarantines must also be met.

of movement during the months of April through August (14 days prior to the date of movement from September through March) and finds it to be free of the gypsy moth; or

(3) It has been treated under the direction of an inspector to destroy the gypsy moth in accordance with the treatment manual and part 305 of this chapter; or

(4) It has been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted thereby as determined by an inspector.

(b) Limited permits may be issued by an inspector to allow interstate movement of any regulated article under this subpart to specified destinations for specified handling, utilization, processing, or treatment in accordance with the treatment manual, when, upon evaluation of all of the circumstances involved in each case, the Administrator determines that such movement will not result in the spread of the gypsy moth because life stages of the moths will be destroyed by such specified handling, utilization, processing or treatment, or the pest will not survive in areas to which shipped, and the requirements of all other applicable Federal domestic plant quarantines have been met.

(c) Certificate and limited permit forms may be issued by an inspector to any person for use for subsequent shipments of regulated articles provided the person is operating under a compliance agreement. Any person operating under a compliance agreement may reproduce the forms as needed to attach them to regulated articles moved under a compliance agreement. Any person operating under a compliance agreement may execute and issue the certificate forms or reproduction of such forms, for the interstate movement of regulated articles from the premises of such person identified in the compliance agreement, if the person has treated such regulated articles as specified in the compliance agreement, and if the regulated articles are eligible for certification for movement to any destination under all applicable Federal domestic plant quarantines. Any person operating under a compliance agreement may execute and issue the

limited permit forms, or reproductions of such forms, for the interstate movement of regulated articles to specified destinations when an inspector has made the determinations specified in paragraph (b) of this section.

(d) A certificate may be issued by a qualified certified applicator for the interstate movement of any outdoor household article or mobile home if such qualified certified applicator determines the following:

(1) That the article has been inspected by the qualified certified applicator and found to be free of any life stage of the gypsy moth; or

(2) That the article has been treated by, or treated under the direct supervision of, the qualified certified applicator to destroy any life stage of the gypsy moth in accordance with methods and procedures prescribed in section III of the Gypsy Moth Program Manual.

(e) An OHA document may be issued by the owner of an outdoor household article for the interstate movement of the article if such person has inspected the outdoor household article and has found it to be free of any life stage of gypsy moth.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by an inspector if he determines that the holder thereof has not complied with any condition for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or permit has been withdrawn may appeal the decision in writing to the Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or permit was wrongfully withdrawn. The Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning

#### § 301.45-6

such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 70 FR 33268, June 7, 2005]

#### § 301.45-6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Qualified certified applicators must enter into compliance agreements, in accordance with the definition of qualified certified applicator in § 301.45-1. A compliance agreement shall specify safeguards necessary to prevent spread of the gypsy moth, such as disinfestation practices or application of chemical materials in accordance with the treatment manual and part 305 of this chapter. Compliance agreement forms may be obtained from the Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement, orally or in writing, whenever the inspector finds that such person has failed to comply with the conditions of the agreement. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of prac-

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tice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994; 70 FR 33268, June 7, 2005]

#### § 301.45-7 Assembly and inspection of regulated articles and outdoor household articles.

Persons (other than those authorized to use certificates or limited permits, or reproductions thereof, under § 301.45-5(c)) who desire to move interstate a regulated article which must be accompanied by a certificate or permit shall, at least 7 days before the desired movement, request an inspector to examine the article prior to movement. Persons who desire to move interstate an outdoor household article accompanied by a certificate issued in accordance with § 301.45-5 shall, at least 14 days before the desired movement, request an inspector to examine the article prior to movement. Persons who desire to move interstate an outdoor household article or a mobile home accompanied by a certificate issued by a qualified certified applicator in accordance with § 301.45-5(d) shall request a qualified certified applicator to examine the article prior to movement. Such articles shall be assembled at such point and in such manner as the inspector or qualified certified applicator designates to facilitate inspection.

#### § 301.45-8 Attachment and disposition of certificates, limited permits, and outdoor household article documents.

(a) A certificate, limited permit, or OHA document required for the interstate movement of a regulated article or outdoor household article must at all times during such movement be securely attached to the outside of the container containing the regulated article or outdoor household article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the waybill or other shipping document: Provided, however, That the requirements of this section may be met by

attaching the certificate, limited permit, or OHA document to the consignee's copy of the waybill or other shipping document only if the regulated article or outdoor household article is sufficiently described on the certificate, limited permit, OHA document or shipping document to identify such article.

(b) The certificate, limited permit, or OHA document for the movement of a regulated article or outdoor household article shall be furnished by the carrier to the consignee at the destination of the shipment.

(c) Any qualified certified applicator who issues a certificate or OHA document shall at the time of issuance send a copy of the certificate or OHA document to the APHIS officer in charge for the State in which the document is issued.

(Approved by the Office of Management and Budget under control number 0579-0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994]

**§ 301.45-9 Inspection and disposal of regulated articles and pests.**

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles, outdoor household articles, and gypsy moths as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

[58 FR 39423, July 23, 1993, as amended at 66 FR 21050, Apr. 27, 2001]

**§ 301.45-10 Movement of live gypsy moths.**

Regulations requiring a permit for, and otherwise governing the movement of, live gypsy moths in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in part 330 of this chapter.

**§ 301.45-11 Costs and charges.**

The services of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

**§ 301.45-12 Disqualification of qualified certified applicator to issue certificates.**

(a) Any qualified certified applicator may be disqualified from issuing certificates by the Administrator if he determines that one of the following has occurred:

(1) Such person is not certified by a State and/or Federal Government as a commercial certified applicator under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (86 Stat. 983; 7 U.S.C. 136b) in a category allowing use of the restricted pesticides Spray N Kill (EPA Registration No. 8730-30), Ficam W (EPA Registration No. 45639-1), and acephate (Orthene®); or

(2) Noncompliance with any of the provisions of this subpart; or,

(3) Failure to attend and complete, each time such person is recertified as a certified commercial applicator under FIFRA, a workshop approved by the Administrator on the identification and treatment of life stages of gypsy moth on outdoor household articles and mobile homes.

(b) The disqualification is effective upon oral or written notification, whichever is earlier. The reasons for the disqualification shall be confirmed in writing as promptly as circumstances permit, unless contained in the written notification. Any qualified certified applicator who is disqualified from issuing certificates may appeal the decision in writing to the Administrator within ten (10) days after receiving written notification of the disqualification. The appeal shall state all of the facts and reasons upon which the person relies to show that the disqualification was a wrongful action. The Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of practice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[58 FR 39423, July 23, 1993, as amended at 59 FR 46902, Sept. 13, 1994]

### Subpart—Japanese Beetle

SOURCE: 44 FR 24035, Apr. 24, 1979, unless otherwise noted.

#### QUARANTINE AND REGULATIONS

#### § 301.48 Notice of quarantine; quarantine restrictions on interstate movement of regulated articles.

(a) Pursuant to the provisions of sections 411, 412, 414, 431, and 434 of the Plant Protection Act ( 7 U.S.C. 7711, 7712, 7714, 7751, and 7754), the Secretary of Agriculture heretofore determined after public hearing to quarantine the States of Alabama, Arkansas, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, Wisconsin, and the District of Columbia in order to prevent the spread of the Japanese beetle, a dangerous insect injurious to cultivated crops and not theretofore widely prevalent or distributed within or throughout the United States.

(b) No person shall move any regulated article interstate from any regulated airport destined to any of the following States except in accordance with the conditions prescribed in this subpart: Arizona, California, Colorado, Idaho, Montana, Nevada, Oregon, Utah, and Washington.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996; 66 FR 21050, Apr. 27, 2001; 68 FR 43614, July 24, 2003; 69 FR 40534, July 6, 2004; 71 FR 35493, June 21, 2006]

#### § 301.48–1 Definitions.

Terms used in the singular form in this subpart shall be deemed to import the plural and vice versa, as the case may demand. The following terms, when used in this subpart shall be construed, respectively, to mean:

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

*Compliance agreement.* A written agreement between the Animal and Plant Health Inspection Service and a person engaged in the business of moving regulated articles interstate, in which the person agrees to comply with the provisions of this subpart.

*Inspector.* Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Administrator to enforce the provisions of the quarantine and regulations in this subpart.

*Interstate.* From any State into or through any other State.

*Japanese beetle.* The live insect known as the Japanese beetle (*Popillia japonica* Newm.) in any stage of development (egg, larva, pupa, or adult).

*Person.* Any individual, corporation, company, partnership, society, or association, or other organized group of any of the foregoing.

*Regulated airport.* Any airport or portions of an airport in a quarantined State declared regulated in accordance with provisions in § 301.48–2 of this subpart.

*Regulated articles.* Aircraft at or from regulated airports.

*State.* Any State, territory, or district of the United States, including Puerto Rico.

*State Plant Regulatory Official.* The authorized official of a State who has responsibility for the operation of the State plant regulatory program.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996; 70 FR 33268, June 7, 2005]

#### § 301.48–2 Authorization to designate, and terminate designation of, regulated airports.

(a) An inspector may declare any airport within a quarantined State to be a regulated airport when he or she determines that adult populations of Japanese beetle exist during daylight hours at the airport to the degree that aircraft constitute a threat to spread the Japanese beetle and aircraft destined for the States listed in § 301.48(b) may be leaving the airport.

(b) An inspector shall terminate the designation provided for under paragraph (a) of this section when he or she determines that adult populations of

Japanese beetle no longer exist at the airport to the degree that the aircraft pose a threat to spread the Japanese beetle.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996]

**§ 301.48-3 Notification of designation, and termination of designation, of regulated airports.**

Upon designating, or terminating the designation of, an airport as regulated, the inspector shall give written notice to the official in charge of the airport that the airport has been designated as a regulated airport or that the designation has been terminated. The inspector shall also give the same information in writing to the official at the airport in charge of each airline or the operator of any other aircraft, which will move a regulated article to any State designated in § 301.48(b). The Administrator shall also give the same information to the State Plant Regulatory Official of each State designated in § 301.48(b) to which any regulated article will move.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32640, June 25, 1996]

**§ 301.48-4 Conditions governing the interstate movement of regulated articles from quarantined States.**

A regulated article may be moved interstate from a regulated airport to any State<sup>1</sup> designated in § 301.48(b) only if:

(a) An inspector, upon visual inspection of the airport and/or the aircraft, determines that the regulated article does not present a threat to spread the Japanese beetle because adult beetle populations are not present; or

(b) The aircraft is opened and loaded only while it is enclosed inside a hangar that an inspector has determined to be free of and safeguarded against Japanese beetle; or

(c) The aircraft is loaded during the hours of 8:00 p.m. to 7:00 a.m. only or lands and departs during those hours and, in either situation, is kept completely closed while on the ground dur-

ing the hours of 7:00 a.m. to 8:00 p.m.; or

(d) If opened and loaded between the hours of 7:00 a.m. to 8:00 p.m., the aircraft is inspected, treated, and safeguarded. Inspection, treatment, and safeguarding must be done either under a compliance agreement in accordance with § 301.48-8 or under the direct supervision of an inspector. On a case-by-case basis, inspectors will determine which of the following conditions, and any supplemental conditions deemed necessary by the Administrator to prevent the spread of Japanese beetle, are required:

(1) All openings of the aircraft must be closed or safeguarded during the hours of 7:00 a.m. to 8:00 p.m. by exclusionary devices or by other means approved by the Administrator.

(2) All cargo containers that have not been safeguarded in a protected area must be inspected immediately prior to and during the loading process. All personnel must check their clothing immediately prior to entering the aircraft. All Japanese beetles found must be removed and destroyed.

(3) All areas around doors and hatches or other openings in the aircraft must be inspected prior to removing the exclusionary devices. All Japanese beetles found must be removed and destroyed. All doors and hatches must be closed immediately after the exclusionary devices are moved away from the aircraft.

(4) Aircraft must be treated in accordance with part 305 of this chapter no more than 1 hour before loading. Particular attention should be paid to the ball mat area and the holes around the main entrance. The aircraft must then be aerated under safeguard conditions as required by part 305 of this chapter.

(5) Aircraft treatment records must be maintained by the applicator completing or supervising the treatment for a period of 2 years. These records must be provided upon request for review by an inspector. Treatment records shall include the pesticide used, the date of application, the location where the pesticide was applied (airport and aircraft), the amount of pesticide applied, and the name of the applicator.

<sup>1</sup>Requirements under all other applicable Federal domestic plant quarantines must be met.



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(6) When a designated aircraft is replaced with an alternate one just prior to departure (the procedure known as “tail swapping”), the alternate aircraft must be inspected and all Japanese beetles must be removed. The aircraft must be safeguarded by closing all openings and hatches or by equipping the aircraft with exclusionary devices until the aircraft is ready for use. During loading, all treatment and safeguard requirements applicable to regularly scheduled aircraft must be implemented.

(7) Aircraft may be retreated in the noninfested State if live Japanese beetles are found.

(8) Notification of unscheduled commercial flights and of all military flights must be given at least 1 hour before departure to the appropriate person in the destination airport of any of the States listed in § 301.48(b). Notification of arriving military flights should also be given to base commanders to facilitate the entrance of Federal and/or State inspectors onto the base if necessary.

[61 FR 32640, June 25, 1996, as amended at 61 FR 56404, Nov. 1, 1996; 70 FR 33268, June 7, 2005]

## **§ 301.48-5 Inspection and disposal of regulated articles and pests.**

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of or require disposal of regulated articles and Japanese beetles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) in accordance with instructions issued by the Administrator.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32641, June 25, 1996; 66 FR 21051, Apr. 27, 2001]

## **§ 301.48-6 Movement of live Japanese beetles.**

Regulations requiring a permit for and otherwise governing the movement of live Japanese beetles in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in part 330 of this chapter. Applications for

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permits for the movement of the pest may be made to the Administrator.

[44 FR 24035, Apr. 24, 1979, as amended at 61 FR 32641, June 25, 1996]

## **§ 301.48-7 Nonliability of the Department.**

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart other than for the services of the inspector.

## **§ 301.48-8 Compliance agreements and cancellation.**

(a) Any person engaged in the business of moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Any person who enters into a compliance agreement, and employees or agents of that person, must allow an inspector access to all records regarding treatment of aircraft and to all areas where loading, unloading, and treatment of aircraft occurs.

(b) A compliance agreement may be canceled by an inspector, orally or in writing, whenever he or she determines that the person who has entered into the compliance agreement has failed to comply with the agreement or this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing within 20 days of oral notification. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. A hearing will be held to resolve any conflict as to any material fact. The Administrator shall adopt rules of practice for the hearing. An appeal shall be granted or denied, in writing, as promptly as circumstances allow, and the reasons for the decision shall be stated. The compliance agreement will remain canceled pending the decision on the appeal.

[61 FR 32641, June 25, 1996]

**Subpart—Pine Shoot Beetle**

SOURCE: 57 FR 54496, Nov. 19, 1992, unless otherwise noted.

**§ 301.50 Restrictions on interstate movement of regulated articles.**

Regulated articles may be moved interstate from any quarantined area only in accordance with this subpart.<sup>1</sup>

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6347, Jan. 28, 1993; 66 FR 21051, Apr. 27, 2001]

**§ 301.50-1 Definitions.**

**Administrator.** The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

**Animal and Plant Health Inspection Service (APHIS).** The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

**Certificate.** A document in which an inspector, or person operating under a compliance agreement, affirms that a specified regulated article is free of pine shoot beetle and may be moved interstate to any destination.

**Compliance agreement.** A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart.

**Infestation.** The presence of the pine shoot beetle or the existence of circumstances that make it reasonable to believe that the pine shoot beetle is present.

**Inspector.** Any employee of the Animal and Plant Health Inspection Service, or other individual, authorized by the Administrator to enforce this subpart.

**Interstate.** From any State into or through any other State.

**Limited permit (permit).** A document in which an inspector, or person operating under a compliance agreement, affirms

that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.50-5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

**Moved (Move, Movement).** Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

**Person.** Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

**Pine bark products.** Pieces of pine bark including bark chips, bark nuggets, bark mulch and bark compost.

**Pine nursery stock.** All *Pinus* spp. woody plants, shrubs, and rooted trees, including dug (balled and burlaped) Christmas trees, and ornamental pine, such as bonsai.

**Pine shoot beetle.** The insect known as pine shoot beetle, *Tomicus piniperda* (Linnaeus), in any stage of development.

**Quarantined area.** Any State, or any portion of a State, listed in § 301.50-3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.50-3(b) of this subpart.

**Regulated article.** Any article listed in § 301.50-2 (a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.50-2(c) of this subpart.

**State.** The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6347, Jan. 28, 1993; 71 FR 13925, Mar. 20, 2006]

**§ 301.50-2 Regulated articles.**

The following are regulated articles:

(a) Pine products (*Pinus* spp.), as follows: Bark products; Christmas trees; logs with bark attached; lumber with bark attached; nursery stock; raw pine materials for pine wreaths and garlands; and stumps.

(b) Any article, product, or means of conveyance not covered by paragraph (a) of this section, that presents a risk of spread of the pine shoot beetle and that an inspector notifies the person in

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance; and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

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possession of it is subject to the restrictions of this subpart.

[57 FR 54496, Nov. 19, 1992, as amended at 60 FR 55778, Nov. 3, 1995; 65 FR 51518, Aug. 24, 2000; 71 FR 13925, Mar. 20, 2006]

#### § 301.50-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area, in paragraph (c) of this section, each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe that the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing a quarantine and regulations that impose restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of these articles; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of the pine shoot beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section, or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

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(c) The areas described below are designated as quarantined areas:

#### CONNECTICUT

The entire State.

#### ILLINOIS

*Boone County.* The entire county.  
*Bureau County.* The entire county.  
*Carroll County.* The entire county.  
*Champaign County.* The entire county.  
*Christian County.* The entire county.  
*Clark County.* The entire county.  
*Coles County.* The entire county.  
*Cook County.* The entire county.  
*De Kalb County.* The entire county.  
*De Witt County.* The entire county.  
*Douglas County.* The entire county.  
*Du Page County.* The entire county.  
*Edgar County.* The entire county.  
*Ford County.* The entire county.  
*Grundy County.* The entire county.  
*Henry County.* The entire county.  
*Iroquois County.* The entire county.  
*Jo Daviess County.* The entire county.  
*Kane County.* The entire county.  
*Kankakee County.* The entire county.  
*Kendall County.* The entire county.  
*La Salle County.* The entire county.  
*Lake County.* The entire county.  
*Lee County.* The entire county.  
*Livingston County.* The entire county.  
*Macon County.* The entire county.  
*Marshall County.* The entire county.  
*Mason County.* The entire county.  
*McHenry County.* The entire county.  
*McLean County.* The entire county.  
*Moultrie County.* The entire county.  
*Ogle County.* The entire county.  
*Peoria County.* The entire county.  
*Piatt County.* The entire county.  
*Putnam County.* The entire county.  
*Shelby County.* The entire county.  
*Stark County.* The entire county.  
*Stephenson County.* The entire county.  
*Tazewell County.* The entire county.  
*Vermilion County.* The entire county.  
*Whiteside County.* The entire county.  
*Will County.* The entire county.  
*Winnebago County.* The entire county.  
*Woodford County.* The entire county.

#### INDIANA

*Adams County.* The entire county.  
*Allen County.* The entire county.  
*Bartholomew County.* The entire county.  
*Benton County.* The entire county.  
*Blackford County.* The entire county.  
*Boone County.* The entire county.  
*Brown County.* The entire county.  
*Carroll County.* The entire county.  
*Cass County.* The entire county.  
*Clinton County.* The entire county.  
*Dearborn County.* The entire county.  
*Decatur County.* The entire county.  
*De Kalb County.* The entire county.

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*Delaware County.* The entire county.  
*Elkhart County.* The entire county.  
*Fayette County.* The entire county.  
*Fountain County.* The entire county.  
*Franklin County.* The entire county.  
*Fulton County.* The entire county.  
*Grant County.* The entire county.  
*Hamilton County.* The entire county.  
*Hancock County.* The entire county.  
*Hendricks County.* The entire county.  
*Henry County.* The entire county.  
*Howard County.* The entire county.  
*Huntington County.* The entire county.  
*Jasper County.* The entire county.  
*Jay County.* The entire county.  
*Jennings County.* The entire county.  
*Johnson County.* The entire county.  
*Kosciusko County.* The entire county.  
*Lagrange County.* The entire county.  
*Lake County.* The entire county.  
*La Porte County.* The entire county.  
*Madison County.* The entire county.  
*Marion County.* The entire county.  
*Marshall County.* The entire county.  
*Miami County.* The entire county.  
*Monroe County.* The entire county.  
*Montgomery County.* The entire county.  
*Morgan County.* The entire county.  
*Newton County.* The entire county.  
*Noble County.* The entire county.  
*Owen County.* The entire county.  
*Park County.* The entire county.  
*Porter County.* The entire county.  
*Pulaski County.* The entire county.  
*Putnam County.* The entire county.  
*Randolph County.* The entire county.  
*Ripley County.* The entire county.  
*Rush County.* The entire county.  
*Shelby County.* The entire county.  
*St. Joseph County.* The entire county.  
*Starke County.* The entire county.  
*Steuben County.* The entire county.  
*Tippecanoe County.* The entire county.  
*Tipton County.* The entire county.  
*Union County.* The entire county.  
*Vermillion County.* The entire county.  
*Vigo County.* The entire county.  
*Wabash County.* The entire county.  
*Warren County.* The entire county.  
*Wayne County.* The entire county.  
*Wells County.* The entire county.  
*White County.* The entire county.  
*Whitley County.* The entire county.

**IOWA**

*Dubuque County.* The entire county.  
*Scott County.* The entire county.

**MAINE**

*Franklin County.* The entire county.  
*Oxford County.* The entire county.

**MARYLAND**

*Allegany County.* The entire county.  
*Frederick County.* The entire county.  
*Garrett County.* The entire county.

*Montgomery County.* The entire county.  
*Washington County.* The entire county.

**MASSACHUSETTS**

The entire State.

**MICHIGAN**

The entire State.

**MINNESOTA**

The entire State.

**NEW HAMPSHIRE**

The entire State.

**NEW JERSEY**

*Bergen County.* The entire county.  
*Hunterdon County.* The entire county.  
*Passaic County.* The entire county.  
*Sussex County.* The entire county.  
*Warren County.* The entire county.

**NEW YORK**

*Albany County.* The entire county.  
*Allegany County.* The entire county.  
*Broome County.* The entire county.  
*Cattaraugus County.* The entire county.  
*Cayuga County.* The entire county.  
*Chautauqua County.* The entire county.  
*Chemung County.* The entire county.  
*Chenango County.* The entire county.  
*Clinton County.* The entire county.  
*Columbia County.* The entire county.  
*Cortland County.* The entire county.  
*Delaware County.* The entire county.  
*Erie County.* The entire county.  
*Essex County.* The entire county.  
*Franklin County.* The entire county.  
*Fulton County.* The entire county.  
*Genesee County.* The entire county.  
*Greene County.* The entire county.  
*Hamilton County.* The entire county.  
*Herkimer County.* The entire county.  
*Jefferson County.* The entire county.  
*Lewis County.* The entire county.  
*Livingston County.* The entire county.  
*Madison County.* The entire county.  
*Monroe County.* The entire county.  
*Montgomery County.* The entire county.  
*Niagara County.* The entire county.  
*Oneida County.* The entire county.  
*Onondaga County.* The entire county.  
*Ontario County.* The entire county.  
*Orange County.* The entire county.  
*Orleans County.* The entire county.  
*Oswego County.* The entire county.  
*Otsego County.* The entire county.  
*Rensselaer County.* The entire county.  
*St. Lawrence County.* The entire county.  
*Saratoga County.* The entire county.  
*Schenectady County.* The entire county.  
*Schoharie County.* The entire county.  
*Schuyler County.* The entire county.  
*Seneca County.* The entire county.  
*Steuben County.* The entire county.

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*Sullivan County.* The entire county.  
*Tioga County.* The entire county.  
*Tompkins County.* The entire county.  
*Ulster County.* The entire county.  
*Warren County.* The entire county.  
*Washington County.* The entire county.  
*Wayne County.* The entire county.  
*Wyoming County.* The entire county.  
*Yates County.* The entire county.

OHIO

*Allen County.* The entire county.  
*Ashland County.* The entire county.  
*Ashtabula County.* The entire county.  
*Athens County.* The entire county.  
*Auglaize County.* The entire county.  
*Belmont County.* The entire county.  
*Butler County.* The entire county.  
*Carroll County.* The entire county.  
*Champaign County.* The entire county.  
*Clark County.* The entire county.  
*Columbiana County.* The entire county.  
*Coshocton County.* The entire county.  
*Crawford County.* The entire county.  
*Cuyahoga County.* The entire county.  
*Darke County.* The entire county.  
*Defiance County.* The entire county.  
*Delaware County.* The entire county.  
*Erie County.* The entire county.  
*Fairfield County.* The entire county.  
*Franklin County.* The entire county.  
*Fulton County.* The entire county.  
*Gallia County.* The entire county.  
*Geauga County.* The entire county.  
*Greene County.* The entire county.  
*Guernsey County.* The entire county.  
*Hamilton County.* The entire county.  
*Hancock County.* The entire county.  
*Hardin County.* The entire county.  
*Harrison County.* The entire county.  
*Henry County.* The entire county.  
*Highland County.* The entire county.  
*Hocking County.* The entire county.  
*Holmes County.* The entire county.  
*Huron County.* The entire county.  
*Jackson County.* The entire county.  
*Jefferson County.* The entire county.  
*Knox County.* The entire county.  
*Lake County.* The entire county.  
*Lawrence County.* The entire county.  
*Licking County.* The entire county.  
*Logan County.* The entire county.  
*Lorain County.* The entire county.  
*Lucas County.* The entire county.  
*Madison County.* The entire county.  
*Mahoning County.* The entire county.  
*Marion County.* The entire county.  
*Medina County.* The entire county.  
*Meigs County.* The entire county.  
*Mercer County.* The entire county.  
*Miami County.* The entire county.  
*Monroe County.* The entire county.  
*Montgomery County.* The entire county.  
*Morgan County.* The entire county.  
*Morrow County.* The entire county.  
*Muskingum County.* The entire county.  
*Noble County.* The entire county.

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*Ottawa County.* The entire county.  
*Paulding County.* The entire county.  
*Perry County.* The entire county.  
*Pickaway County.* The entire county.  
*Pike County.* The entire county.  
*Portage County.* The entire county.  
*Preble County.* The entire county.  
*Putnam County.* The entire county.  
*Richland County.* The entire county.  
*Ross County.* The entire county.  
*Sandusky County.* The entire county.  
*Scioto County.* The entire county.  
*Seneca County.* The entire county.  
*Shelby County.* The entire county.  
*Stark County.* The entire county.  
*Summit County.* The entire county.  
*Trumbull County.* The entire county.  
*Tuscarawas County.* The entire county.  
*Union County.* The entire county.  
*Van Wert County.* The entire county.  
*Vinton County.* The entire county.  
*Warren County.* The entire county.  
*Washington County.* The entire county.  
*Wayne County.* The entire county.  
*Williams County.* The entire county.  
*Wood County.* The entire county.  
*Wyandot County.* The entire county.

PENNSYLVANIA

The entire State.

RHODE ISLAND

The entire State

VERMONT

The entire State.

VIRGINIA

*Clarke County.* The entire county.

WEST VIRGINIA

The entire state.

WISCONSIN

The entire State.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6348, Jan. 28, 1993; 58 FR 28335, May 13, 1993; 58 FR 34682, June 29, 1993; 58 FR 63027, Nov. 30, 1993; 59 FR 39939, Aug. 5, 1994; 59 FR 52892, Oct. 20, 1994; 60 FR 2322, Jan. 9, 1995; 60 FR 55779, Nov. 3, 1995; 62 FR 64679, Dec. 9, 1997; 63 FR 25155, May 7, 1998; 64 FR 387, Jan. 5, 1999; 65 FR 37842, June 19, 2000; 66 FR 37403, July 18, 2001; 66 FR 46692, Sept. 6, 2001; 67 FR 41308, June 18, 2002; 69 FR 244, Jan. 5, 2004; 69 FR 31725, June 7, 2004; 70 FR 30330, May 26, 2005; 71 FR 29762, May 24, 2006; 71 FR 58245, Oct. 3, 2006]

**§ 301.50-4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

Any regulated article may be moved interstate from a quarantined area<sup>2</sup> only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.50-5 and 301.50-8 of this subpart;

(b) Without a certificate or limited permit, if:

(1)(i) The regulated article originates outside any quarantined area and is moved through the quarantined area without stopping (except for dropoff loads, refueling, or traffic conditions, such as traffic lights or stop signs) during October, November, or December, or when ambient air temperature is below 10 °C (50 °F); or

(ii) The regulated article originates outside any quarantined area and, during the period of January through September, is moved through the quarantined area at a temperature higher than 10 °C (50 °F), if the article is shipped in an enclosed vehicle or completely covered (such as with plastic, canvas, or other closely woven cloth) so as to prevent access by the pine shoot beetle; and

(2) The point of origin of the regulated article is indicated on the waybill.

(c) With a limited permit issued by the Administrator if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Under conditions, specified on the permit, which the Administrator has found to be adequate to prevent the spread of the pine shoot beetle; and

(3) With a tag or label, bearing the number of the permit issued for the regulated article, attached to the outside of the container of the regulated article or attached to the regulated article itself, if the regulated article is not in a container.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 28335, May 13, 1993]

<sup>2</sup>Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

**§ 301.50-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate will be issued by an inspector<sup>3</sup> for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.50-10 of this subpart, or, if pine bark products, produced according to the requirements of the management method in § 301.50-10(d) of this subpart; or

(ii) Based on inspection of the premises of origin, if the regulated article is a greenhouse-grown pine (such as bonsai), that the greenhouse is free from the pine shoot beetle and is screened to prevent entry of the pine shoot beetle; or

(iii) Based on inspection of the regulated article, if the regulated article is a pine seedling or a pine transplant and is no greater than 36 inches high with a bole diameter at soil level of 1 inch or less, that it is free from the pine shoot beetle; or

(iv) Based on inspection by an inspector (branch tip-by-branch tip) of pine nursery stock, that it is free from the pine shoot beetle; or

(v) If the regulated article is a pine log with bark attached or pine lumber with bark attached or a pine stump, that its source tree has been felled during the period of July 1 through October 31 or if the regulated article is pine bark products produced from a tree felled and debarked during the period of July 1 through October 31; and

(2)(i) The regulated article will be moved through the quarantined area during October, November, or December, or when the ambient air temperature is below 10 °C (50 °F); or

(ii) The regulated article will be moved through the quarantined area during the period of January through

<sup>3</sup>Services of an inspector may be requested by contacting the local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

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September, if the ambient air temperature is 10 °C (50 °F) or higher, in an enclosed vehicle or completely enclosed by a covering adequate to prevent access by the pine shoot beetle; or

(iii) The pine log with pine bark attached, pine lumber with bark attached, or pine stump from a tree felled during the period of July 1 through October 31, or the pine bark products produced from a tree felled and debarked during the period of July 1 through October 31, will be shipped interstate from the quarantined area during the period of July 1 through October 31 of the same year in which the source tree was felled; and

(3) The regulated article is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>4</sup> to prevent the spread of the pine shoot beetle; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector<sup>5</sup> will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(i) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the pine shoot beetle. If the regulated article is part of a shipment of pine Christmas trees, the inspector will make a pest-risk determination on the basis of an inspection conducted in accordance with § 301.50-5(c) of this paragraph; or

(ii) The regulated article is to be moved interstate from a quarantined area to a quarantined area and will transit any non-quarantined area in an enclosed vehicle or completely enclosed by a covering adequate to pre-

vent access by the pine shoot beetle; and

(2) The regulated article is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the pine shoot beetle; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) The number of pine Christmas trees randomly selected for inspection is determined by the size and type of shipment, in accordance with the following tables. If a shipment mixes painted and natural trees, the inspection procedure for painted trees will apply.

TABLE 1—PAINTED (COLOR-ENHANCED) PINE CHRISTMAS TREES<sup>1</sup>

No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample
1-72 .....	All	701-800 .....	120
73-100 .....	73	801-900 .....	121
101-200 .....	96	901-1,000 .....	122
201-300 .....	106	1,001-2,000 .....	126
301-400 .....	111	2,001-3,000 .....	127
401-500 .....	115	3,001-5,000 .....	128
501-600 .....	117	5,001-10,000 .....	129
601-700 .....	119	10,001 or more .....	130

<sup>1</sup> If a pine shoot beetle is detected in any one of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated, prior to January 1."

TABLE 2—NATURAL (UNPAINTED) CHRISTMAS TREES<sup>1</sup>

No. of trees in shipment	No. of trees to sample	No. of trees in shipment	No. of trees to sample
1-57 .....	All	501-600 .....	80
58-100 .....	58	601-700 .....	81
101-200 .....	69	701-1,000 .....	82
201-300 .....	75	1,001-3,000 .....	84
301-400 .....	77	3,001-10,000 .....	85
401-500 .....	79	10,001 or more .....	86

<sup>1</sup> If a pine shoot beetle is detected in any one of the trees being sampled, the entire shipment must be rejected. If no pine shoot beetle is detected in any of the trees sampled, the shipment will be allowed to move with a limited permit. The limited permit must state, "All trees that remain unsold as of December 25 must be destroyed by burning or chipping, or must be fumigated, prior to January 1."

(d) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a

<sup>4</sup> An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

<sup>5</sup> See footnote 3 to § 301.50-5(a).

compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(e) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally, or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6348, Jan. 28, 1993; 58 FR 28335, May 13, 1993; 58 FR 34683, June 29, 1993; 59 FR 67608, Dec. 30, 1994; 66 FR 21051, Apr. 27, 2001; 71 FR 13925, Mar. 20, 2006]

#### **§ 301.50-6 Compliance agreements and cancellation.**

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines

that the person understands this subpart.<sup>6</sup>

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning such a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 34683, June 29, 1993; 59 FR 67608, Dec. 30, 1994]

#### **§ 301.50-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.50-5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,<sup>7</sup> at least 48 hours in advance of the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner

<sup>6</sup>Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>7</sup>See footnote 3 to § 301.50-5(a).



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the inspector designates as necessary to comply with this subpart.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 34683, June 29, 1993]

**§ 301.50-8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article must be attached, at all times during the interstate movement, to the outside of the container containing the regulated article, or to the regulated article itself, if not in a container. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 34683, June 29, 1993]

**§ 301.50-9 Costs and charges.**

The services of the inspector during normal business hours (8 a.m. to 4:30

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p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

**§ 301.50-10 Treatments and management method.**

(a) Fumigation is authorized for use on pine logs with bark attached, pine lumber with bark attached, pine bark products, and pine stumps, as follows: Logs, lumber, and stumps may be treated with methyl bromide at normal atmospheric pressure with 48 g/m<sup>3</sup> (3 lb/1000 ft<sup>3</sup>) for 16 hours at 21 °C (70 °F) or above, or 80 g/m<sup>3</sup> (5 lb/1000 ft<sup>3</sup>) for 16 hours at 4.5 - 20.5 °C (40 - 69 °F.).

(b) Cold treatment is authorized for cut pine Christmas trees, pine nursery stock, and raw pine materials for pine wreaths and garlands as follows: The regulated articles must be loaded into a refrigeration unit and held at -20.6 °C (-5 °F) for one hour; the period before the refrigeration unit reaches the specified temperature is not part of the treatment period.

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees and raw pine materials for pine wreaths and garlands. Cut pine Christmas trees and raw pine materials for pine wreaths and garlands may be treated with methyl bromide at normal atmospheric pressure as follows:

Temperature	Dosage: pounds per 1000 feet <sup>3</sup>	Exposure: hours	Concentration readings: ounces per 1000 feet <sup>3</sup>			
			2.0 hr	3.0 hr	3.5 hr	4.0 hr
40-49 °F .....	4.0	4.0	57	—	—	48
50-59 °F .....	4.0	3.5	57	—	48	—
50-59 °F .....	3.5	4.0	50	—	—	42
60 °F+ .....	4.0	3.0	57	48	—	—
60 °F+ .....	3.0	4.0	43	—	—	36

NOTE: APHIS assumes no responsibility for damage to cut pine Christmas trees due to possible phytotoxic effects of these treatments. Trees should be cut at least 14 days before treatment to reduce the possibility of phytotoxic effects.

(d) *Management method for pine bark products.* The following procedures are authorized for use with pine bark products derived from white pine (*Pinus strobus*), Scotch pine (*P. sylvestris*), red pine (*P. resinosa*), and jack pine (*P. banksiana*) trees. Pine bark products will only be considered to have been produced in accordance with this man-

agement method if the following procedures are followed:

(1) For pine bark products produced from trees felled during the period November 1 through March 31:

(i) The trees must be harvested at a height of 4 inches or more above the duff line; and

(ii) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and

(iii) For Scotch pine, red pine, and jack pine, the bark must either be ground into pieces of 1 inch or less in diameter or composted in accordance with the procedure in paragraph (d)(3) of this section.

(2) For pine bark products produced from trees felled during the period April 1 through June 30:

(i) The trees must have been mechanically debarked with a ring debarker or a Rosser head debarker; and

(ii) The bark must either be ground into pieces of 1 inch or less in size or composted in accordance with the procedure in paragraph (d)(3) of this section.

(3) Composting for pine bark products for the management method in this paragraph (d) must be performed as follows:

(i) The pile of pine bark to be composted must be at least 200 cubic yards in size; and

(ii) The compost pile must remain undisturbed until the interior temperature of the pile reaches 120°F (49°C) and remains at or over that temperature for 4 consecutive days; and

(iii) After the 4-day period is completed, the outer layer of the compost pile must be removed to a depth of 3 feet; and

(iv) A second compost pile must be started using the cover material previously removed as a core. Core material must be removed from the first pile and used to cover the second compost pile to a depth of 3 feet; and

(v) The second compost pile must remain undisturbed until the interior temperature of the pile reaches 120°F (49°C) and remains at or over that temperature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

(vi) Previously composted material generated using this procedure may be used as cover material for subsequent compost piles. A compost pile that uses previously composted material must remain undisturbed until the interior temperature of the pile reaches 120°F (49°C) and remains at or over that tem-

perature for 4 consecutive days. After this 4-day period, the composting procedure is complete.

[57 FR 54496, Nov. 19, 1992, as amended at 58 FR 6348, Jan. 28, 1993; 58 FR 28335, May 13, 1993; 58 FR 63027, Nov. 30, 1993; 60 FR 55780, 55781, Nov. 3, 1995; 65 FR 51518, Aug. 24, 2000; 71 FR 13925, Mar. 20, 2006]

### Subpart—Asian Longhorned Beetle

SOURCE: 62 FR 10416, Mar. 7, 1997, unless otherwise noted.

#### § 301.51-1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Asian longhorned beetle.* The insect known as Asian longhorned beetle (*Anoplophora glabripennis*) in any stage of development.

*Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.51-5(a).

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

*Infestation.* The presence of the Asian longhorned beetle in any life stage.

*Inspector.* Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to enforce the provisions of this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

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*Moved (movement, move).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.51-3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.51-3(b) of this subpart.

*Regulated article.* Any article listed in § 301.51-2(a) of this subpart or otherwise designated as a regulated article in accordance with § 301.51-2(b) of this subpart.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

### § 301.51-2 Regulated articles.

The following are regulated articles:

(a) Firewood (all hardwood species), and green lumber and other material living, dead, cut, or fallen, inclusive of nursery stock, logs, stumps, roots, branches, and debris of half an inch or more in diameter of the following genera: *Acer* (maple), *Aesculus* (horse chestnut), *Albizia* (mimosa), *Betula* (birch), *Celtis* (hackberry), *Fraxinus* (ash), *Platanus* (sycamore), *Populus* (poplar), *Salix* (willow), *Sorbus* (mountain ash), and *Ulmus* (elm).

(b) Any other article, product, or means of conveyance not covered by paragraph (a) of this section if an inspector determines that it presents a risk of spreading Asian longhorned beetle and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of this subpart.

[62 FR 10416, Mar. 7, 1997, as amended at 62 FR 60764, Nov. 13, 1997; 68 FR 26985, May 19, 2003]

### § 301.51-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section, each State or each portion of a State in which the Asian longhorned beetle has been found by an inspector, in which

the Administrator has reason to believe that the Asian longhorned beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where Asian longhorned beetle has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the Asian longhorned beetle.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

#### NEW JERSEY

*Middlesex and Union Counties.* That portion of the counties, including the municipalities of Roselle, Elizabeth City, Linden, Carteret, Woodbridge, Rahway, and Clark, that is bounded by a line drawn as follows: Beginning at the intersection of Locust Street (County Road 619) and West Grand Avenue

(Union County 610) in Roselle, NJ; then east on West Grand Avenue to Chilton Street; then south on Chilton Street to South Street; then east on South Street to Broad Street; then south on Broad Street to Summer Street; then east on Summer Street to the Elizabeth River; then east along the Elizabeth River to the Arthur Kill; then south along the Arthur Kill (New Jersey and New York State border) to the point where Roosevelt Avenue (State Route 602) meets the Arthur Kill in Carteret, NJ; then south along Roosevelt Avenue to Port Reading Avenue (State Route 604); then west southwest along Port Reading Avenue to the Conrail railroad; then north and west along the Conrail railroad right-of-way to the NJ Transit railroad right-of-way; then north and northwest along the NJ Transit railroad right-of-way to the south branch of the Rahway River; then west along the south branch of the Rahway River to St. Georges Avenue (State Highway 27); then north along St. Georges Avenue to its intersection with the eastern border of Rahway River Park (Union County Park); then north along the eastern border of Rahway River Park to the intersection of Valley Road and Union County Parkway; then north along Union County Parkway to North Stiles Street; then northwest along North Stiles Street to Raritan Road; then northeast along Raritan Road to the perpendicular intersection of Raritan Road and the Cranford/Linden township border (144 Raritan Road); then north along the Cranford/Linden border to Myrtle Street; then east along Myrtle Street to the intersection of Amsterdam Avenue and Wood Avenue; then southeast along Wood Avenue to 5th Avenue; then northeast along 5th Avenue to Locust Street; then north along Locust Street to the point of beginning.

#### NEW YORK

*New York City.* That area in the boroughs of Manhattan, Brooklyn, and Queens in the City of New York that is bounded by a line beginning at the point where the Brooklyn Battery Tunnel intersects the Manhattan shoreline of the East River; then west and north along the shoreline of the Hudson River to Martin Luther King Jr. Boulevard; then east on Martin Luther King Jr. Boulevard and across the Triborough Bridge to its intersection with the west shoreline of Randall's and Wards Island; then east and south along the shoreline of Randall's and Wards Island to its intersection with the Triborough Bridge; then east along the Triborough Bridge to its intersection with the Queens shoreline; then north and east along the Queens shoreline to its intersection with the City of New York/Nassau County line; then southeast along the City of New York/Nassau County line to its intersection with the Grand Central Parkway; then west

on the Grand Central Parkway to the Jackie Robinson Parkway; then west on the Jackie Robinson Parkway to Park Lane; then south on Park Lane to Park Lane South; then south and west on Park Lane South to 112th Street; then south on 112th Street to Atlantic Avenue; then west on Atlantic Avenue to 106th Street; then south on 106th Street to Liberty Avenue; then west on Liberty Avenue to Euclid Avenue; then south on Euclid Avenue to Linden Boulevard; then west on Linden Boulevard to Canton Avenue; then west on Canton Avenue to the Prospect Expressway; then north and west on the Prospect Expressway to the Gowanus Expressway; then north and west on the Gowanus Expressway to Hamilton Avenue and the Brooklyn Battery Tunnel; then north on Hamilton Avenue and the Brooklyn Battery Tunnel across the East River to the point of beginning.

*Nassau and Suffolk Counties.* That area in the villages of Amityville, West Amityville, North Amityville, Babylon, West Babylon, Copiague, Lindenhurst, Massapequa, Massapequa Park, and East Massapequa; in the towns of Oyster Bay and Babylon; in the counties of Nassau and Suffolk that is bounded as follows: Beginning at a point where West Main Street intersects the west shoreline of Carlis Creek; then west along West Main Street to Route 109; then north along Route 109 to Arnold Avenue; then northwest along Arnold Avenue to Albin Avenue; then west along Albin Avenue to East John Street; then west along East John Street to Wellwood Avenue; then north along Wellwood Avenue to the Southern State Parkway; then west along the Southern State Parkway to Broadway; then south along Broadway to Hicksville Road; then south along Hicksville Road to Division Avenue; then south along Division Avenue to South Oyster Bay; then east along the shoreline of South Oyster Bay to Carlis Creek; then along the west shoreline of Carlis Creek to the point of beginning.

That area in the villages of Bayshore, East Islip, Islip, and Islip Terrace in the Town of Islip, in the County of Suffolk, that is bounded as follows: Beginning at a point where Route 27A intersects Brentwood Road; then east along Route 27A to the Southern State Parkway Heckscher Spur; then north and west along the Southern State Parkway Heckscher Spur to Carleton Avenue; then north along Carleton Avenue to the southern boundary of the New York Institute of Technology; then west along the southern boundary of the New York Institute of Technology through its intersection with Wilson Boulevard to Pear Street; then west along Pear Street through its intersection with Freeman Avenue to Riddle Street; then west along Riddle Street to Broadway; then south along Broadway to the Southern State Parkway Heckscher Spur; then west along the

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Southern State Parkway Heckscher Spur to Brentwood Road; then south along Brentwood Road to the point of beginning.

[62 FR 10416, Mar. 7, 1997, as amended at 63 FR 63387, Nov. 13, 1998; 64 FR 28715, May 27, 1999; 65 FR 4866, Feb. 2, 2000; 65 FR 54944, Sept. 12, 2000; 66 FR 56430, Nov. 8, 2001; 68 FR 26985, May 19, 2003; 69 FR 10600, Mar. 8, 2004; 70 FR 4005, Jan. 28, 2005; 70 FR 21327, Apr. 26, 2005; 70 FR 61351, Oct. 24, 2005; 71 FR 40880, July 19, 2006; 71 FR 59651, Oct. 11, 2006]

#### § 301.51-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

(a) Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.51-5 and 301.51-8;

(2) Without a certificate or limited permit if:

(i) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(ii) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(A) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(B) The regulated article is moved through the quarantined area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by Asian longhorned beetle; and

(C) The article has not been combined or commingled with other articles so as to lose its individual identity.

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article interstate, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infected by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of.

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#### § 301.51-5 Issuance and cancellation of certificates and limited permits.

(a) An inspector<sup>1</sup> or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

(1)(i) Is apparently free of Asian longhorned beetle in any stage of development, based on inspection of the regulated article; or

(ii) Has been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, the regulated article does not present a risk of spreading Asian longhorned beetle; and

(2) Is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>2</sup> to prevent the artificial spread of the Asian longhorned beetle; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this interstate movement will not result in the spread of Asian longhorned beetle because Asian longhorned beetle will be destroyed by the specific processing, handling, or utilization; and

<sup>1</sup>Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>2</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(2) It is to be moved in compliance with any additional conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) in order to prevent the spread of the Asian longhorned beetle; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.51-6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

[62 FR 10416, Mar. 7, 1997, as amended at 66 FR 21051, Apr. 27, 2001]

#### **§ 301.51-6 Compliance agreements and cancellation.**

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement<sup>3</sup> if such persons review with an inspector each stipulation of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

#### **§ 301.51-7 Assembly and inspection of regulated articles.**

(a) Persons requiring certification or other services must request the services from an inspector<sup>4</sup> at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner

<sup>3</sup>Compliance agreements may be initiated by contacting a local office of APHIS. The addresses and telephone numbers of local offices are listed in local telephone directories and may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>4</sup>See footnote 1 to § 301.51-5.

## § 301.51-8

that the inspector designates as necessary to comply with this subpart.

### § 301.51-8 Attachment and disposition of certificates and limited permits.

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

(1) The outside of the container enclosing the regulated article;

(2) The article itself, if it is not in a container; or

(3) The consignee's copy of the accompanying waybill; Provided, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the destination of the shipment.

### § 301.51-9 Costs and charges.

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

## Subpart—Pink Bollworm

SOURCE: 32 FR 16385, Nov. 30, 1967, unless otherwise noted.

### QUARANTINE AND REGULATIONS

### § 301.52 Quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* The following States are quarantined to prevent the spread of the pink bollworm (*Pectinophora gossypiella* (Saund.)): Arizona, California, New Mexico, and Texas.

(b) *Regulated articles.* No common carrier or other person shall move interstate from any quarantined State any regulated article, except in accordance

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with this subpart. The following are regulated articles:

(1) Cotton and wild cotton, including all parts of these plants.

(2) Seed cotton.

(3) Cottonseed.

(4) American-Egyptian (long-staple) varieties of cotton lint, linters, and lint cleaner waste; except:<sup>1</sup>

(i) American-Egyptian cotton lint, linters, and lint cleaner waste compressed to a density of at least 22 pounds per cubic foot.

(ii) Trade samples of American-Egyptian cotton lint and linters.

(5) Cotton waste produced at cotton gins and cottonseed oil mills.

(6) Cotton gin trash.

(7) Used bagging and other used wrappers for cotton.

(8) Used cotton harvesting equipment and used cotton ginning and used cotton oil mill equipment.

(9) Kenaf, including all parts of the plants.

(10) Okra, including all parts of these plants, except:

(i) Canned or frozen okra; or

(ii) Okra seed; and

(iii) Fresh, edible fruits of okra:

(A) During December 1 through May 15 if moved interstate, but only during January 1 through March 15 if moved to California.

(B) During May 16 through November 30, if moved interstate to any portion of Illinois, Kentucky, Missouri, or Virginia that is north of the 38th parallel; or to any destination in Colorado, Connecticut, Delaware, District of Columbia, Idaho, Indiana, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, Nebraska, New Hampshire, New Jersey, New York, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Washington, West Virginia, Wisconsin, or Wyoming.

(11) Any other product, article, or means of conveyance not covered by paragraphs (b) (1) through (10) of this section, when an inspector determines that it presents a risk of spread of the

<sup>1</sup>The articles hereby exempted remain subject to applicable restrictions under other quarantines and must have not been exposed to pink bollworm infestation after ginning or compression as prescribed.

pink bollworm and the person in possession of the product, article, or means of conveyance has actual notice that it is subject to the restrictions of this subpart.

[32 FR 16385, Nov. 30, 1967, as amended at 48 FR 28424, June 22, 1983; 49 FR 26188, June 27, 1984; 52 FR 26943, July 17, 1987; 53 FR 4842, Feb. 18, 1988; 53 FR 36432, Sept. 20, 1988; 56 FR 9274, Mar. 6, 1991; 57 FR 31304, July 15, 1992; 58 FR 36952, July 8, 1993; 58 FR 39418, July 23, 1993; 59 FR 44608, Aug. 30, 1994; 59 FR 46721, Sept. 12, 1994; 62 FR 23945, May 2, 1997; 65 FR 11204, Mar. 2, 2000; 67 FR 34818, May 16, 2002]

#### § 301.52-1 Definitions.

Terms used in the singular form in this subpart shall be deemed to import the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively to mean:

*Certificate.* A document issued or authorized to be issued under this subpart by an inspector to allow the interstate movement of regulated articles to any destination.

*Compliance agreement.* A written agreement between a person engaged in growing, handling, or moving regulated articles, and the Plant Protection and Quarantine Programs, wherein the former agrees to comply with the requirements of this subpart identified in the agreement by the inspector who executes the agreement on behalf of the Plant Protection and Quarantine Programs as applicable to the operations of such person.

*Deputy Administrator.* The Deputy Administrator of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of said Service to whom authority to act in his stead has been or may hereafter be delegated.

*Generally infested area.* Any part of a regulated area not designated as a suppressive area in accordance with § 301.52-2.

*Infestation.* The presence of the pink bollworm or the existence of circumstances that make it reasonable to believe that pink bollworm is present.

*Inspector.* Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agri-

culture, or other person authorized by the Deputy Administrator to enforce the provisions of the quarantine and regulations in this subpart.

*Interstate.* From any State, territory, or district of the United States into or through any other State, territory, or district of the United States (including Puerto Rico).

*Limited permit.* A document issued or authorized to be issued by an inspector to allow the interstate movement of noncertified regulated articles to a specified destination for limited handling, utilization, or processing or for treatment.

*Moved (movement, move).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means. "Movement" and "move" shall be construed accordingly.

*Person.* Any individual, corporation, company, society, or association, or other organized group of any of the foregoing.

*Pink bollworm.* The live insect known as the pink bollworm of cotton (*Pectinophora gossypiella* Saund.), in any stage of development.

*Regulated area.* Any quarantined State, territory, or district, or any portion thereof, listed as a regulated area in § 301.52-2a by the Deputy Administrator in accordance with § 301.52-2(a).

*Regulated articles.* Any articles described in § 301.52(b).

*Restricted destination permit.* A document issued or authorized to be issued by an inspector to allow the interstate movement of regulated articles not certified under all applicable Federal domestic plant quarantines to a specified destination for other than scientific purposes.

*Scientific permit.* A document issued by the Deputy Administrator to allow the interstate movement to a specified destination of regulated articles for scientific purposes.

*Suppressive area.* That part of a regulated area where eradication of infestation is undertaken as an objective, as



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designated by the Deputy Administrator under § 301.52-2(a).

[32 FR 16385, Nov. 30, 1967, as amended at 35 FR 2859, Feb. 12, 1970; 36 FR 24917, Dec. 24, 1971; 37 FR 10554, May 25, 1972; 52 FR 26943, July 17, 1987; 67 FR 34818, May 16, 2002; 70 FR 33268, June 7, 2005]

### § 301.52-2 Authorization for Deputy Administrator to list regulated areas and suppressive or generally infested areas.

The Deputy Administrator shall publish and amend from time to time as the facts warrant, the following lists:

(a) *List of regulated areas and suppressive or generally infested areas.* The Deputy Administrator shall list as regulated areas in a supplemental regulation designated as § 301.52-2a, the quarantined States, territories, or districts, or portions thereof, in which pink bollworm has been found or in which there is reason to believe that pink bollworm is present, or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator, in the supplemental regulation, may divide any regulated area into a suppressive area and a generally infested area in accordance with the definitions thereof in § 301.52-1. Less than an entire quarantined State, territory, or district will be designated as a regulated area only if the Deputy Administrator is of the opinion that:

(1) The State, territory, or district has adopted and is enforcing a quarantine or regulations which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State, territory, or district, as a regulated area will otherwise be adequate to prevent the interstate spread of the pink bollworm.

[32 FR 16385, Nov. 30, 1967, as amended at 52 FR 26943, July 17, 1987]

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### § 301.52-2a Regulated areas; suppressive and generally infested areas.

The civil divisions and part of civil divisions described below are designated as pink bollworm regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below.

#### ARIZONA

- (1) *Generally infested area.* Entire State.
- (2) *Suppressive area.* None.

#### CALIFORNIA

- (1) *Generally infested area.*  
*Imperial County.* The entire county.  
*Inyo County.* The entire county.  
*Los Angeles County.* The entire county.  
*Orange County.* The entire county.  
*Riverside County.* The entire county.  
*San Bernardino County.* The entire county.  
*San Diego County.* The entire county.
- (2) *Suppressive area.*  
*Fresno County.* The entire county.  
*Kern County.* The entire county.  
*Kings County.* The entire county.  
*Madera County.* The entire county.  
*Merced County.* The entire county.  
*San Benito County.* The entire county.  
*Tulare County.* The entire county.

#### NEW MEXICO

- (1) *Generally infested area.* Entire State.
- (2) *Suppressive area.* None.

#### TEXAS

- (1) *Generally infested area.* Entire State.
- (2) *Suppressive area.* None.

[42 FR 13533, Mar. 11, 1977]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 301.52-2a, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 301.52-3 Conditions governing the interstate movement of regulated articles from quarantined States.<sup>2</sup>

Any regulated articles may be moved interstate from any quarantined State under the following conditions:

(a) From any regulated area, with certificate or permit issued and attached in accordance with §§ 301.52-4 and 301.52-7 if moved:

<sup>2</sup>Requirements under all other applicable Federal domestic plant quarantines must also be met.

(1) From any regulated area into or through any point outside of the regulated areas; or

(2) From any generally infested area into or through any suppressive area; or

(3) Between any noncontiguous suppressive areas; or

(4) Between contiguous suppressive areas when it is determined by the inspector that the regulated articles present a hazard of the spread of the pink bollworm and the person in possession thereof has been so notified; or

(b) From any regulated area, without certificate or permit if moved;

(1) From a generally infested area to a contiguous generally infested area; or

(2) From a suppressive area to a contiguous generally infested area; or

(3) Between contiguous suppressive areas unless the person in possession of the articles has been notified by an inspector that a hazard of spread of the pink bollworm exists; or

(4) Through or reshipped from any regulated area if the articles originated outside of any regulated area and if the point of origin of the articles is clearly indicated, their identity has been maintained and they have been safeguarded against infestation while in the regulated area in a manner satisfactory to the inspector; or

(c) From any area outside the regulated areas, without a certificate or permit if the point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

[32 FR 16385, Nov. 30, 1967, as amended at 52 FR 26943, July 17, 1987; 70 FR 33268, June 7, 2005]

**§ 301.52-4 Issuance and cancellation of certificates and permits.**

(a) Certificates may be issued for any regulated articles by any inspector if he determines that they are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles and:

(1) Have originated in noninfested premises in a regulated area and have not been exposed to infestation while within the regulated areas; or

(2) Upon examination, have been found to be free of infestation; or

(3) Have been treated to destroy infestation in accordance with part 305 of this chapter; or

(4) Have been grown, produced, manufactured, stored, or handled in such manner that no infestation would be transmitted thereby.

(b) Limited permits may be issued by an inspector to allow interstate movement of regulated articles, not eligible for certification under this subpart, to specified destinations for limited handling, utilization, or processing, or for treatment in accordance with part 305 of this chapter, when upon evaluation of the circumstances involved in each specific case the inspector determines that such movement will not result in the spread of the pink bollworm and requirements of other applicable Federal domestic plant quarantines have been met.

(c) Restricted destination permits may be issued by an inspector to allow the interstate movement of regulated articles to any destination permitted under all applicable Federal domestic plant quarantines (for other than scientific purposes) if such articles are not eligible for certification under all such quarantines but would otherwise qualify for certification under this subpart.

(d) Scientific permits may be issued by the Deputy Administrator to allow the interstate movement of regulated articles for scientific purposes under such conditions as may be prescribed in each specific case by the Deputy Administrator.

(e) Certificate, limited permit, and restricted destination permit forms may be issued by an inspector to any person for use by the latter for subsequent shipments provided such person is operating under a compliance agreement; and any such person may be authorized by an inspector to reproduce such forms on shipping containers or otherwise. Any such person may use the certificate forms, or reproductions of such forms, for the interstate movement of regulated articles from the premises of such person identified in the compliance agreement if such person has made one of the determination

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specified in paragraph (a) of this section with respect to such articles. Any such person may use the limited permit forms, or reproductions of such forms, for interstate movement of regulated articles to specific destinations authorized by the inspector in accordance with paragraph (b) of this section. Any such person may use the restricted destination permit forms, or reproductions of such forms, for the interstate movement of regulated articles not eligible for certification under all Federal domestic plant quarantines applicable to such articles, under the conditions specified in paragraph (c) of this section.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by the inspector if the inspector determines that the holder thereof has not complied with any condition for the use of such document imposed by this subpart.

[32 FR 16385, Nov. 30, 1967, as amended at 70 FR 33268, June 7, 2005]

## **§ 301.52-5 Compliance agreements; and cancellation thereof.**

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Compliance agreement forms may be obtained from the Deputy Administrator or an inspector.

(b) Any compliance agreement may be cancelled by the inspector who is supervising its enforcement whenever the inspector finds, after notice and reasonable opportunity to present views has been accorded to the other party thereto, that such other party has failed to comply with the conditions of the agreement.

[32 FR 16385, Nov. 30, 1967, as amended at 70 FR 33268, June 7, 2005]

## **§ 301.52-6 Assembly and inspection of regulated articles.**

Persons (other than those authorized to use certificates, limited permits, or restricted destination permits, or reproductions thereof, under § 301.52-4(e)) who desire to move interstate regulated articles which must be accompanied by a certificate or permit shall, as far in advance as possible, request

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an inspector to examine the articles prior to movement. Such articles shall be assembled at such points and in such manner as the inspector designates to facilitate inspection.

## **§ 301.52-7 Attachment and disposition of certificates or permits.**

(a) If a certificate or permit is required for the interstate movement of regulated articles, the certificate or permit shall be securely attached to the outside of the container in which such articles are moved, except that, where the certificate or permit is attached to the waybill or other shipping document, and the regulated articles are adequately described on the certificate, permit, or shipping document, the attachment of the certificate or permit to each container of the articles is not required.

(b) In all cases, certificates or permits shall be furnished by the carrier to the consignee at the destination of the shipment.

## **§ 301.52-8 Inspection and disposal of regulated articles and pests.**

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and pink bollworms as provided sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754), in accordance with instructions issued by the Deputy Administrator.

[32 FR 16385, Nov. 30, 1967, as amended at 66 FR 21051, Apr. 27, 2001]

## **§ 301.52-9 Movement of live pink bollworms.**

Regulations requiring a permit for, and otherwise governing the movement of live pink bollworms in interstate or foreign commerce are contained in the Federal Plant Pest regulations in part 330 of this chapter. Applications for permits for the movement of the pest may be made to the Deputy Administrator.

## **§ 301.52-10 Nonliability of the Department.**

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and

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regulations in this subpart, other than for the services of the inspector.

### Subpart—Emerald Ash Borer

SOURCE: 68 FR 59088, Oct. 8, 2003, unless otherwise noted.

#### § 301.53-1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any individual authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS).* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Certificate.* A document that is issued for a regulated article by an inspector or by a person operating under a compliance agreement and that represents that such article is eligible for interstate movement in accordance with § 301.53-5(a).

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

*Emerald ash borer.* The insect known as emerald ash borer (*Agrilus planipennis* [Coleoptera: Buprestidae]) in any stage of development.

*Infestation.* The presence of the emerald ash borer or the existence of circumstances that make it reasonable to believe that the ash borer is present.

*Inspector.* Any employee of the Animal and Plant Health Inspection Service, or other individual authorized by the Administrator to enforce the provisions of this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector or a person operating under a compliance agreement affirms that the regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

*Moved (movement, move).* Shipped, offered for shipment, received for transportation, transported, carried, or al-

lowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.53-3(c) or otherwise designated as a quarantined area in accordance with § 301.53-3(b).

*Regulated article.* Any article listed in § 301.53-2(a) or otherwise designated as a regulated article in accordance with § 301.53-2(b).

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

#### § 301.53-2 Regulated articles.

The following are regulated articles:

(a) The emerald ash borer; firewood of all hardwood (non-coniferous) species; nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*.

(b) Any other article, product, or means of conveyance not listed in paragraph (a) of this section may be designated as a regulated article if an inspector determines that it presents a risk of spreading emerald ash borer and notifies the person in possession of the article, product, or means of conveyance that it is subject to the restrictions of the regulations.

[68 FR 59088, Oct. 8, 2003, as amended at 70 FR 252, Jan. 4, 2005]

#### § 301.53-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State or each portion of a State in which the emerald ash borer has been found by an inspector, in which the Administrator has reason to believe that the emerald ash borer is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities where emerald ash borer has been found. Less than an entire State will be designated

as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than an entire State as a quarantined area will be adequate to prevent the artificial interstate spread of the emerald ash borer.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraph (a) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (c) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

#### Indiana

*Adams County.* The entire county.  
*Hamilton County.* The entire county.  
*Huntington County.* The entire county.  
*LaGrange County.* The entire county.  
*Marion County.* The entire county.  
*Randolph County.* The entire county.  
*Steuben County.* The entire county.

#### Michigan

Upper Peninsula: *Chippewa County.* Brimley area. That portion of the county bounded by a line drawn as follows: Beginning at the intersection of Michigan Route 28 and Crawford Street; then north on Crawford Street to Irish Line Road; then north on Irish Line Road to its end and con-

tinuing north along an imaginary line to the Bay Mills/Superior Township line; then north and east along the Bay Mills/Superior Township line to the Lake Superior shoreline; then east along the Lake Superior shoreline to the Bay Mills/Soo Township line; then south on the Bay Mills/Soo Township line to the intersection of the Dafter and Superior Township lines at 6 Mile Road; then south along the Dafter/Superior Township line to Forrest Road; then south on Forrest Road to Michigan Route 28; then west on Michigan Route 28 to the point of beginning. [Note: This quarantined area includes tribal land of the Bay Mills Indian Community. Movement of regulated articles on those lands is subject to tribal jurisdiction.]

Lower Peninsula: All counties, in their entirety (i.e., Alcona, Allegan, Alpena, Antrim, Arenac, Barry, Bay, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Cheboygan, Clare, Clinton, Crawford, Eaton, Emmet, Genesee, Gladwin, Grand Traverse, Gratiot, Hillsdale, Huron, Ingham, Ionia, Iosco, Isabella, Jackson, Kalamazoo, Kalkaska, Kent, Lake, Lapeer, Leelanau, Lenawee, Livingston, Macomb, Manistee, Mason, Mecosta, Midland, Missaukee, Monroe, Montcalm, Montmorency, Muskegon, Newaygo, Oakland, Oceana, Ogemaw, Osceola, Oscoda, Otsego, Ottawa, Presque Isle, Roscommon, Saginaw, Sanilac, St. Clair, St. Joseph, Shiawassee, Tuscola, Van Buren, Washtenaw, Wayne, and Wexford Counties).

#### Ohio

*Auglaize County.* Duchouquet Township.

*Defiance County.* The entire county.

*Delaware County.* Delaware Township, Orange Township.

*Erie County.* The entire county, excluding Kelleys Island.

*Fulton County.* The entire county.

*Hancock County.* Allen Township, Cass Township, Pleasant Township, Portage Township, and Washington Township.

*Henry County.* The entire county.

*Huron County.* Bronson Township, Clarksfield Township, Harland Township, Lyme Township, Norwalk Township, Peru Township, Ridgefield Township, Sherman Township, Townsend Township, and Wakeman Township.

*Lorain County.* Brownhelm Township, Camden Township, Henrietta Township, and the City of Vermilion.

*Lucas County.* The entire county.

*Ottawa County.* The entire county, excluding Ballast, Green, Middle Bass, North Bass, Rattlesnake, South Bass, Starve, and Sugar Islands.

*Sandusky County.* The entire county.

*Williams County.* The entire county.

*Wood County.* The entire county.

[68 FR 59088, Oct. 8, 2003, as amended at 70 FR 252, Jan. 4, 2005; 70 FR 10316, Mar. 3, 2005; 70 FR 62231, Oct. 31, 2005; 71 FR 29764, May 24, 2006; 71 FR 57873, Oct. 2, 2006]

**§ 301.53-4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

Regulated articles may be moved interstate from a quarantined area only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.53-5 and 301.53-8;

(b) Without a certificate or limited permit if:

(1) The regulated article is moved by the United States Department of Agriculture for experimental or scientific purposes; or

(2) The regulated article originates outside the quarantined area and is moved interstate through the quarantined area under the following conditions:

(i) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(ii) The regulated article, if moved through the quarantined area during the period of May 1 through August 31 or when the ambient air temperature is 40 °F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by the EAB; and

(iii) The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by emerald ash borer; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity.

**§ 301.53-5 Issuance and cancellation of certificates and limited permits.**

(a) An inspector<sup>1</sup> or person operating under a compliance agreement will

<sup>1</sup>Inspectors are assigned to local offices of APHIS, which are listed in the local telephone directories. Information concerning such local offices may also be obtained from

issue a certificate for the interstate movement of a regulated article if he or she determines that the regulated article:

(1)(i) Is apparently free of EAB, based on inspection; or the article or

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that, in the judgment of the inspector, prevents the regulated article from presenting a risk of spreading EAB; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>2</sup> in order to prevent the artificial spread of emerald ash borer; and

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector or a person operating under a compliance agreement will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if he or she determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specific processing, handling, or utilization (the destination and other conditions to be listed on the limited permit), and this interstate movement will not result in the spread of emerald ash borer because emerald ash borer will be destroyed by the specific processing, handling, or utilization; and

(2) Is to be moved in compliance with any additional emergency conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) in order to prevent the spread of emerald ash borer; and

the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>2</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 423 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

(3) Is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.53-6 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the interstate movement of regulated articles that have met all of the requirements of paragraph (a) or (b), respectively, of this section.

(d) Any certificate or limited permit may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose certificate or limited permit has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579-0233)

**§ 301.53-6 Compliance agreements and cancellation.**

(a) Persons engaged in growing, handling, or moving regulated articles interstate may enter into a compliance agreement<sup>3</sup> if such persons review with

<sup>3</sup>Compliance agreements may be initiated by contacting a local office of APHIS. The

an inspector each provision of the compliance agreement. Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the person who has entered into the compliance agreement has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately, and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances permit. Any person whose compliance agreement has been canceled may appeal the decision in writing to the Administrator within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve a conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579-0233)

**§ 301.53-7 Assembly and inspection of regulated articles.**

(a) Persons requiring certification or other services must request the services from an inspector<sup>4</sup> at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner that the inspector designates as necessary to comply with this subpart.

(Approved by the Office of Management and Budget under control number 0579-0233)

addresses and telephone numbers of local offices are listed in local telephone directories and may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, MD 20737-1236.

<sup>4</sup>See footnote 1 to § 301.53-5.

**§ 301.53-8 Attachment and disposition of certificates and limited permits.**

(a) A regulated article must be plainly marked with the name and address of the consignor and the name and address of the consignee and must have the certificate or limited permit issued for the interstate movement of a regulated article securely attached at all times during interstate movement to:

- (1) The regulated article;
- (2) The container carrying the regulated article; or
- (3) The consignee's copy of the accompanying waybill: *Provided*, that the description of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the destination of the shipment.

(Approved by the Office of Management and Budget under control number 0579-0233)

**§ 301.53-9 Costs and charges.**

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

### **Subpart—Mexican Fruit Fly Quarantine and Regulations**

SOURCE: 48 FR 54580, Dec. 6, 1983, unless otherwise noted.

**§ 301.64 Restrictions on interstate movement of regulated articles.**

No person shall move any regulated article interstate from any quarantined area except in accordance with this subpart.<sup>1,2</sup>

[70 FR 37253, June 29, 2005]

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

**§ 301.64-1 Definitions.**

Terms used in the singular form in this subpart shall be construed as a plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

**Certificate.** A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.64-5(c).

**Compliance agreement.** A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

**Core area.** The 1 square mile area surrounding each property where Mexican fruit fly has been detected.

**Day degrees.** A mathematical construct combining average temperature over time that is used to calculate the length of a Mexican fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

(Minimum Daily Temp + Maximum Daily Temp)/2) – 54° = Day Degrees.

**Departmental permit.** A document issued by the Administrator in which he or she affirms that the interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.64-4(c).

**Deputy Administrator.** The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

**Infestation.** The presence of the Mexican fruit fly or the existence of circumstances that make it reasonable to

<sup>2</sup>Regulations concerning the movement of plant pests, including live Mexican fruit flies, in interstate commerce are contained in part 330 of this chapter.



## § 301.64-2

believe that the Mexican fruit fly is present.

**Inspector.** Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantines and regulations in this subpart.

**Interstate.** From any State into or through any other State.

**Limited permit.** A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 301.64-5(b).

**Mexican fruit fly.** The insect known as Mexican fruit fly (*Anastrepha ludens* (Loew)) in any stage of development.

**Moved (movement, move).** Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means. "Movement" and "move" shall be construed accordingly.

**Person.** Any individual, partnership, corporation, company, society, association, or other organized group.

**Plant Protection and Quarantine.** The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

**Quarantined area.** Any State, or any portion of a State, listed in § 301.64-3(c) or otherwise designated as a quarantined area in accordance with § 301.64-3(b).

**Regulated article.** Any article listed in § 301.64-2 of otherwise designated as a regulated article in accordance with § 301.64-2(c).

**State.** Each of the several States of the United States, the District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other ter-

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ritories and possessions of the United States.

[48 FR 54580, Dec. 6, 1983, as amended at 57 FR 521, Jan. 7, 1992; 66 FR 21051, Apr. 27, 2001; 70 FR 37253, June 29, 2005]

### § 301.64-2 Regulated articles.

(a) The following fruits are regulated articles:

Apple (*Malus sylvestris*)  
Apricot (*Prunus armeniaca*)  
Avocado (*Persea americana*)  
Calamondin orange (*X citrofortunella mitis*)  
Cherimoya (*Annona cherimola*)  
Citrus citron (*Citrus medica*)  
Custard apple (*Annona reticulata*)  
Grapefruit (*Citrus paradisi*)  
Guava (*Pisidium guajava*)  
Japanese plum (*Prunus salicina*)  
Lemon (*Citrus limon*) except Eureka, Lisbon, and Villa Franca cultivars (smooth-skinned sour lemon)  
Lime (*Citrus aurantiifolia*) except sour limes  
Mamey (*Mammea americana*)  
Mandarin orange (tangerine) (*Citrus reticulata*)  
Mango (*Mangifera indica*)  
Nectarine (*Prunus persica*)  
Peach (*Prunus persica*)  
Pear (*Pyrus communis*)  
Plum (*Prunus americana*)  
Pomegranate (*Punica granatum*)  
Prune, Plum (*Prunus domestica*)  
Plummelo (Shaddock) (*Citrus maxima*)  
Quince (*Cydonia oblonga*)  
Rose apple (*Syzygium jambos* (*Eugenia jambos*))  
Sour orange (*Citrus aurantium*)  
Sapote (*Casimiroa* spp.)  
Sapota, Sapodilla (Sapotaceae)  
Sargentia, yellow chapote (*Sargentia greggii*)  
Spanish plum, purple mombin or Ciruela (*Spondias* spp.)  
Sweet orange (*Citrus sinensis*)

Except that the list does not include any fruits which have been canned, or frozen below  $-17.8^{\circ}\text{C}$  ( $0^{\circ}\text{F}$ );

(b) Soil within the drip line of plants which are producing or have produced the fruits listed in paragraph (a) of this section, and

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) or paragraph (b) of this section, when it is determined by an inspector that it presents a risk of spread of the Mexican fruit fly and the person in possession thereof has actual notice that

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the product, article or means of conveyance is subject to the restrictions of this section.

[48 FR 54580, Dec. 6, 1983, as amended at 64 FR 71269, Dec. 21, 1999]

### § 301.64-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion thereof, in which the Mexican fruit fly has been found by an inspector or in which the Deputy Administrator has reason to believe that the Mexican fruit fly is present, or each portion of a State which the Deputy Administrator deems necessary to regulate because of its proximity to the Mexican fruit fly or its inseparability for quarantine enforcement purposes from localities in which the Mexican fruit fly occurs. Less than an entire State will be designated as a quarantined area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a quarantined area will otherwise be adequate to prevent the artificial interstate spread of the Mexican fruit fly.

(b) The Deputy Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonquarantined area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice

thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as quarantined areas:

#### TEXAS

*Cameron County.* The entire county.

*Hidalgo County.* The entire county.

*Willacy County.* The entire county.

[48 FR 54580, Dec. 6, 1983]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 301.64-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

### § 301.64-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area only if moved under the following conditions:<sup>3</sup>

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.64-5 and 301.64-8;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mexican fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is clearly indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for normal traffic conditions, such as traffic lights or stop signs; or

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a departmental permit issued by the Administrator for the regulated article;

<sup>3</sup>Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(3) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of Mexican fruit fly; and

(4) With a tag or label bearing the number of the departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in the container.

(Approved by the Office of Management and Budget under control number 0579-0238)

[48 FR 54580, Dec. 6, 1983, as amended at 57 FR 522, Jan. 7, 1992; 70 FR 37254, June 29, 2005]

**§ 301.64-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate shall be issued by an inspector for the movement of a regulated article if such inspector:

(1)(i) Determines that it has been treated under the direction of an inspector<sup>4</sup> in accordance with § 301.64-10; or

(ii) Determines based on inspection of the premises of origin that the premises are free from the Mexican fruit fly and the article has not been exposed to Mexican fruit fly; or

(iii) Determines based on inspection of the article that it is free from Mexican fruit fly; and

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the Mexican fruit fly;<sup>5</sup> and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to

be moved to a specified destination for specified handling, utilization, processing, or for treatment in accordance with § 301.64-10 (such destination and other conditions to be specified on the limited permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of the Mexican fruit fly because life stages of the pest will be destroyed by such specified handling, utilization, processing, or treatment;

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the Mexican fruit fly;<sup>5</sup> and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(c) Certificates and limited permits for use for movement of regulated articles may be issued by an inspector or person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if such person has treated such regulated article to destroy infestation in accordance with the provisions in § 301.64-10 and the inspector has made the determination that such article is otherwise eligible for a certificate in accordance with paragraph (a) of this section; or if the inspector has made the determination that such article is eligible for a certificate in accordance with paragraph (a) of this section without such treatment. Any such person may execute and issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that such article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any conditions under the regulations

<sup>4</sup>Treatments shall be monitored by inspectors in order to assure compliance with the requirements in this subpart.

<sup>5</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

[48 FR 54580, Dec. 6, 1983, as amended at 66 FR 21051, Apr. 27, 2001]

**§ 301.64-6 Compliance agreement and cancellation thereof.**

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.<sup>6</sup> The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefore shall be confirmed in writing, as promptly as circumstances permit. Any person

<sup>6</sup>Compliance agreement forms are available without charge from local offices of the Animal and Plant Health Inspection Service, Plant Protection and Quarantine. Local offices are listed in telephone directories, or on the Internet at <http://www.aphis.usda.gov/ppq/>.

whose compliance agreement has been cancelled may appeal the decision, in writing, within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

[48 FR 54580, Dec. 6, 1983, as amended at 59 FR 67608, Dec. 30, 1994; 70 FR 37254, June 29, 2005]

**§ 301.64-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.64-5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector<sup>7</sup> to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such article shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

[48 FR 54580, Dec. 6, 1983, as amended at 59 FR 67608, Dec. 30, 1994; 70 FR 37254, June 29, 2005]

**§ 301.64-8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article, at the times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if

<sup>7</sup>Inspectors are assigned to local offices of Plant Protection and Quarantine, which are listed in telephone directories. Information concerning such local offices may also be obtained on the Internet at <http://www.aphis.usda.gov/ppq/>.

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not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; *Provided however*, That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.64-9 Costs and charges.

The services of an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

[70 FR 37254, June 29, 2005]

§ 301.64-10 Treatments.

Treatments for regulated articles must be one of the following:

(a) *Apple, grapefruit, orange, pear, plum, pomegranate, quince, and tangerine*. Cold treatment in accordance with part 305 of this chapter.

(b) *Soil within the dripline of plants that are producing or that have produced fruits listed in § 301.64-2(a)*. Remove host fruits from host plants prior to treatment. Using ground equipment, drench the soil under the host plants with 5 lb a.i. diazinon per acre (0.12 lb or 2 oz avdp per 1,000 ft<sup>2</sup>) mixed with 130 gal of water per acre (3 gal per 1,000 ft<sup>2</sup>). Apply at 14- to 16-day intervals as needed. Repeat applications if infestations become established. In addition to the above, follow all label directions for diazinon.

(c) *Premises*. A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with either malathion or spinosad bait spray. These treatments must take place at 6-to 10-day intervals, starting a sufficient time before harvest (but

not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mexican fruit fly. Determination of the time period must be based on the day degrees model for Mexican fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

(d) *Grapefruit and oranges*. Methyl bromide in accordance with part 305 of this chapter.

(e) *Grapefruit, oranges, and tangerines*. High-temperature forced air in accordance with part 305 of this chapter.

(f) *Citrons, litchis, longans, persimmons, and white sapotes*. Cold treatment in accordance with the following schedule, which is also found in part 305 of this chapter:

Treatment (°F)	Exposure period (days)
33 or below .....	18
34 or below .....	20
35 or below .....	22

(g) *Approved irradiation treatment*. Irradiation, carried out in accordance with the provisions of part 305 of this chapter, is approved as a treatment for any fruit listed as a regulated article in § 301.64-2(a).

(1) *Approved facility*. The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must:

(i) Be capable of administering a minimum absorbed ionizing radiation dose of 150 Gray (15 krad) to the fruit;<sup>8</sup>

(ii) Be constructed so as to provide physically separate locations for treated and untreated fruit, except that

<sup>8</sup>The maximum absorbed ionizing radiation dose and the irradiation of food are regulated by the Food and Drug Administration under 21 CFR part 179.

fruit traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons;

(iii) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 301.64-6; and

(iv) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

(2) *Treatment monitoring.* Treatment must be carried out under the monitoring of an inspector. This monitoring must include inspection of treatment records and unannounced inspection visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.<sup>9</sup>

(3) *Packaging.* Fruits and vegetables that are treated within a quarantined area must be packaged in the following manner:

(i) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.<sup>10</sup>

(ii) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(A) With polyethylene sheet wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(4) *Dosage.* The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 150 Gray (15 krad).<sup>11</sup>

(5) *Dosimetry systems.* (i) Dosimetry mapping must indicate the dose needed to ensure the fruit will receive the minimum dose prescribed.

(ii) Absorbed dose must be measured using an accurate dosimetry system that ensures that the absorbed dose meets or exceeds 150 Gray (15 krad).

(iii) When designing the facility's dosimetry system and procedures for its operation, the facility operator must address guidance and principles from American Society for Testing and Materials (ASTM) standards.<sup>12</sup>

(6) *Records.* Records or invoices for each treated lot must be made available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). An irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration,

<sup>9</sup>Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

<sup>10</sup>If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Tech-

nology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606.

<sup>11</sup>See footnote 8.

<sup>12</sup>Designation ISO/ASTM 51261-2002(E), "Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing," American Society for Testing and Materials, *Annual Book of ASTM Standards*.

dosimetry, dose distribution in the product, and the date of irradiation.

(7) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (g)(1) of this section.

(8) *Denial and withdrawal of approval.*

(i) The Administrator will withdraw the approval of any irradiation treatment facility when the irradiation processor requests in writing the withdrawal of approval.

(ii) The Administrator will deny or withdraw approval of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(9) *Department not responsible for damage.* This treatment is approved to assure quarantine security against Mexi-

can fruit fly. From the literature available, the fruits authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(Approved by the Office of Management and Budget under control number 0579–0088)

[63 FR 68164, Dec. 10, 1998, as amended at 64 FR 37665, July 13, 1999; 64 FR 71270, Dec. 21, 1999; 67 FR 8464, Feb. 25, 2002; 68 FR 8819, Feb. 26, 2003; 70 FR 33268, June 7, 2005; 70 FR 37254, June 29, 2005; 71 FR 4459, Jan. 27, 2006]

### Subpart—Plum Pox

SOURCE: 65 FR 35264, June 2, 2000, unless otherwise noted.

#### § 301.74 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.<sup>1</sup>

[65 FR 35264, June 2, 2000, as amended at 66 FR 21051, Apr. 27, 2001]

#### § 301.74–1 Definitions.

The following definitions apply to this subpart.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

## Animal and Plant Health Inspection Service, USDA

## § 301.74-3

Inspection Service (APHIS) of the United States Department of Agriculture.

*Departmental permit.* A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.74-4 of this subpart.

*Infestation (infested, infected).* The presence of plum pox or circumstances or symptoms that makes it reasonable to believe that plum pox is present.

*Inspector.* Any employee of the Animal and Plant Health Inspection Service, United States Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

*Interstate.* From any State into or through any other State.

*Moved (move, movement).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Plant Protection and Quarantine.* Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Plum pox.* A plant disease caused by plum pox potyvirus that can affect many *Prunus* (stone fruit) species, including, but not limited to, almond, apricot, nectarine, peach, plum, and sweet and tart cherry. The strain of plum pox in Pennsylvania does not affect cherry trees.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.74-3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.74-3(b) of this subpart.

*Regulated article.* Any article listed in § 301.74-2(a) or otherwise designated as a regulated article in accordance with § 301.74-2(b), based on its susceptibility to the form or strain of plum pox detected in the quarantined area.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands,

or any State, territory, or possession of the United States.

### § 301.74-2 Regulated articles.

The following are regulated articles:

(a) All plant material and plant parts of *Prunus* (stone fruit) species other than *P. avium*, *P. cerasus*, *P. effusa*, *P. laurocerasus*, *P. mahaleb*, *P. padus*, *P. sargentii*, *P. serotina*, *P. serrula*, *P. serrulata*, *P. subhirtella*, *P. yedoensis*, and *P. virginiana*, except for seeds and fruit that is free of leaves and other plant parts. This includes, but is not limited to, trees, seedlings, root stock, budwood, branches, twigs, and leaves.

(b) Any other product or article that an inspector determines to present a risk of spreading plum pox when the inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

### § 301.74-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which plum pox has been detected through inspection and laboratory testing, or in which the Administrator has reason to believe that plum pox is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which plum pox has been detected. Less than an entire State will be designated as a quarantined area if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of plum pox.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with



paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which the quarantine designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

PENNSYLVANIA

*Adams County.* The townships of Latimore and Huntington.

**§ 301.74-4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

The interstate movement of any regulated article from a quarantined area<sup>2</sup> is prohibited except when:

(a) The regulated article is moved by the United States Department of Agriculture:

(1) For an experimental or scientific purpose;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of plum pox; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container; or

(b) The regulated article originated outside the quarantined area and:

(1) Is moved in an enclosed vehicle or is completely enclosed by a covering (such as canvas, plastic, or other close-

ly woven cloth) adequate to prevent access by aphids or other transmission agents of plum pox while in the quarantined area;

(2) The regulated article's point of origin is indicated on the waybill; and

(3) The regulated article must not be uncovered, unpacked, or unloaded while moving through the quarantined area.

**§ 301.74-5 Compensation.**

(a) *Eligibility.* The following individuals are eligible to receive compensation from the U.S. Department of Agriculture to mitigate losses or expenses incurred because of the plum pox quarantine and emergency actions:

(1) *Owners of commercial stone fruit orchards.* Owners of commercial stone fruit orchards are eligible to receive compensation for losses associated with the destruction of trees in order to control plum pox pursuant to an emergency action notification issued by the Animal and Plant Health Inspection Service (APHIS).

(i) *Direct marketers.* Orchard owners eligible for compensation under this paragraph who market all fruit they produce under the conditions described in this paragraph may receive compensation at the rates specified in paragraph (b)(1)(i) of this section. In order to be eligible to receive compensation at the rates specified in paragraph (b)(1)(i) of this section, orchard owners must have marketed fruit produced in orchards subsequently destroyed because of plum pox under the following conditions:

(A) The fruit must have been sold exclusively at farmers markets or similar outlets that require orchard owners to sell only fruit that they produce;

(B) The fruit must not have been marketed wholesale or at reduced prices in bulk to supermarkets or other retail outlets;

(C) The fruit must have been marketed directly to consumers; and

(D) Orchard owners must have records documenting that they have met the requirements of this section, and must submit those records to APHIS as part of their application submitted in accordance with paragraph (c) of this section.

<sup>2</sup>Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

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(ii) *All other orchard owners.* Orchard owners eligible for compensation under this paragraph who do not meet the requirements of paragraph (a)(1)(i) of this section are eligible for compensation only in accordance with paragraph (b)(1)(ii) of this section.

(2) *Owners of fruit tree nurseries.* The owner of a fruit tree nursery will be eligible to receive compensation for net revenue losses associated with the prohibition on the movement or sale of nursery stock as a result of the issuance of an emergency action notification by APHIS with respect to regulated articles within the nursery in order to control plum pox.

(b) *Amount of payment.* Upon approval of a claim submitted in accordance with paragraph (c) of this section, individuals eligible for compensation under paragraph (a) of this section will be

paid at the rates indicated in this paragraph.

(1) *Owners of commercial stone fruit orchards—(i) Direct marketers.* Owners of commercial stone fruit orchards who APHIS has determined meet the eligibility requirements of paragraph (a)(1)(i) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees destroyed. If the trees were not destroyed by the date specified on the emergency action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources does not exceed 100 percent of the loss in value.

Age of trees (years)	Maximum compensation rate (\$/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation (\$/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation (\$/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1 .....	\$2,403	\$828	\$736
1 .....	9,584	1,710	1,520
2 .....	13,761	1,710	1,520
3 .....	17,585	1,710	1,520
4 .....	21,888	1,710	1,520
5 .....	25,150	1,710	1,520
6 .....	25,747	1,710	1,520
7 .....	25,859	1,710	1,520
8 .....	25,426	1,710	1,520
9 .....	24,938	1,710	1,520
10 .....	24,390	1,710	1,520
11 .....	23,774	1,710	1,520
12 .....	23,080	1,710	1,520
13 .....	22,300	1,710	1,520
14 .....	21,422	1,710	1,520
15 .....	20,434	1,710	1,520
16 .....	19,323	1,710	1,520
17 .....	18,185	1,710	1,520
18 .....	17,017	1,710	1,520
19 .....	15,814	1,710	1,520
20 .....	14,572	1,710	1,520
21 .....	13,287	1,710	1,520
22 .....	12,066	1,710	1,520
23 .....	10,915	1,710	1,520
24 .....	9,620	1,710	1,520
25 .....	8,163	1,710	1,520

(ii) *All other orchard owners.* Owners of commercial stone fruit orchards who meet the eligibility requirements of paragraph (a)(1)(ii) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees destroyed. If the trees were not destroyed by the date specified on the emergency

action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources

does not exceed 100 percent of the loss in value.

Age of trees (years)	Maximum compensation rate (\$/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation (\$/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation (\$/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1 .....	\$2,403	\$828	\$736
1 .....	4,805	828	736
2 .....	7,394	828	736
3 .....	9,429	828	736
4 .....	12,268	828	736
5 .....	14,505	828	736
6 .....	14,918	828	736
7 .....	15,000	828	736
8 .....	14,709	828	736
9 .....	14,383	828	736
10 .....	14,015	828	736
11 .....	13,601	828	736
12 .....	13,136	828	736
13 .....	12,613	828	736
14 .....	12,024	828	736
15 .....	11,361	828	736
16 .....	10,616	828	736
17 .....	9,854	828	736
18 .....	9,073	828	736
19 .....	8,272	828	736
20 .....	7,446	828	736
21 .....	6,594	828	736
22 .....	5,789	828	736
23 .....	5,035	828	736
24 .....	4,341	828	736
25 .....	3,713	828	736

(2) *Owners of fruit tree nurseries.* Owners of fruit tree nurseries who meet the eligibility requirements of paragraph (a)(2) of this section will be compensated for up to 85 percent of the net revenues lost from their first and second year crops as the result of the issuance of an emergency action notification which will be calculated as follows:

(i) *First year crop.* The net revenue loss for trees that were expected to be sold in the year during which the emergency action notification was issued (*i.e.*, the first year crop) will be calculated as (*expected number of trees to be sold*)  $\times$  (*average price per tree*) - (*digging, grading, and storage costs*) = net revenue lost for first year crop, where:

(A) The expected number of trees to be sold equals the number of trees in the field minus 2 percent culls minus 3 percent unsold trees; and

(B) The average price per tree is \$4.65; and

(C) Digging, grading and storage costs are \$0.10 per tree.

(ii) *Second year crop.* The net revenue loss for trees that would be expected to be sold in the year following the year

during which the emergency action notification was issued (*i.e.*, the second year crop) will be calculated as (*expected number of trees to be sold*)  $\times$  (*average price per tree*) = net revenue lost for second year crop, where:

(A) The expected number of trees to be sold equals the number of budded trees in the field minus 20 percent death loss minus 2 percent culls; and

(B) The average price per tree is \$4.65 for plum and apricot trees and \$3.30 for peach and nectarine trees.

(c) *How to apply.* The form necessary to submit a claim for compensation may be obtained from the Plum Pox Cooperative Eradication Program, USDA, APHIS, PPQ, 401 East Louthier Street, Suite 102, Carlisle, PA 17013-2625. The completed claim form must be sent to the same address. Claims for trees or nursery stock destroyed on or before the effective date of this rule must be received within 60 days after the effective date of this rule. Claims for trees or nursery stock destroyed after the effective date of this rule must be received within 60 days after the destruction of the trees or nursery

stock. Claims must be submitted as follows:

(1) *Claims by owners of stone fruit orchards who are direct marketers.* The completed application must be accompanied by:

(i) A copy of the emergency action notification ordering the destruction of the trees and its accompanying inventory that describes the acreage and ages of trees removed;

(ii) Documentation verifying that the destruction of trees has been completed and the date of that destruction; and

(iii) Records documenting that the grower meets the eligibility requirements of paragraph (a)(1)(i) of this section.

(2) *Claims by owners of commercial stone fruit orchards who are not direct marketers.* The completed application must be accompanied by a copy of the emergency action notification ordering the destruction of the trees, its accompanying inventory that describes the acreage and ages of trees removed, and documentation verifying that the destruction of trees has been completed and the date of that destruction.

(3) *Claims by owners of fruit tree nurseries.* The completed application must be accompanied by a copy of the order prohibiting the sale or movement of the nursery stock, its accompanying inventory that describes the total number of trees and the age and variety, and documentation describing the final disposition of the nursery stock.

(d) *Replanting.* Trees of susceptible *Prunus* species (i.e., *Prunus* species identified as regulated articles) may not be replanted on premises within a contiguous quarantined area until 3 years from the date the last trees within that area were destroyed because of plum pox pursuant to an emergency action notification issued by APHIS.

(Approved by the Office of Management and Budget under control numbers 0579-0159 and 0579-0251)

[65 FR 55435, Sept. 14, 2000, as amended at 69 FR 30816, June 1, 2004]

### Subpart—Citrus Canker

SOURCE: 50 FR 51231, Dec. 13, 1985, unless otherwise noted.

### NOTICE OF QUARANTINE AND REGULATIONS

#### § 301.75-1 Definitions.

*ACC coverage.* The crop insurance coverage against Asiatic citrus canker (ACC) provided under the Florida Fruit Tree Pilot Crop Insurance Program authorized by the Federal Crop Insurance Corporation.

*Administrator.* The Administrator of the Animal and Plant Health Inspection Service or any individual authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

*Budded citrus nursery stock.* Liners or rootstock citrus plants that have been grafted with a portion of a stem or branch with a vegetative bud (also known as budwood) that are maintained 1 month after grafting or until the plant reaches marketability.

*Budded container/greenhouse grown citrus plants.* Individual, budded citrus nursery stock maintained in climate-controlled greenhouses in 4-or 6-inch diameter pots until it is sold for commercial use.

*Budded field grown citrus plants.* Individual, budded citrus nursery stock maintained in the fields until it is sold for commercial use.

*Certificate.* An official document of the United States Department of Agriculture authorizing the interstate movement of a regulated article from a quarantined area into any area of the United States.

*Certified citrus nursery stock.* Citrus nursery stock, such as trees or plants, grown at a nursery that is in compliance with State certification requirements and approved for producing citrus nursery stock for commercial sale.

*Citrus canker.* A plant disease caused by strains of the bacterium *Xanthomonas axonopodis* pv. *citri*.

*Commercial citrus grove.* An establishment maintained for the primary purpose of producing citrus fruit for commercial sale.

*Commercial citrus nursery.* An establishment engaged in, but not limited to, the production of certified citrus nursery stock, including plants for

planting or replanting in commercial groves or for wholesale or retail sales.

*Commercial citrus-producing area.* Any area designated as a commercial citrus-producing area in accordance with § 301.75-5 of this subpart.

*Compliance agreement.* A written agreement between the Animal and Plant Health Inspection Service and a person engaged in the business of growing or handling regulated articles for interstate movement, in which the person pledges to comply with this subpart.

*Departmental permit.* An official document of the United States Department of Agriculture authorizing the movement of a regulated article from a quarantined area.

*Departmental tag or label.* An official tag or label of the United States Department of Agriculture, which, attached to a regulated article or its container, indicates that the regulated article is eligible for interstate movement with a Departmental permit.

*Exposed.* Determined by an inspector to be at risk for developing citrus canker because of proximity during the past 2 years to infected plants, or to personnel, vehicles, equipment, or other articles that may have been contaminated with bacteria that cause citrus canker.

*Grove.* Any tree or stand of trees maintained to produce fruit and separated from other trees by a boundary, such as a fence, stream, road, canal, irrigation ditch, hedgerow, open space, or sign or marker denoting change of fruit variety.

*Infected.* Containing bacteria that cause citrus canker.

*Infestation.* The presence of a plant or plants infected with citrus canker at a particular location, except when the plant or plants contracted the infection at a previous location and the infection has not spread to any other plant at the present location.

*Inspector.* An individual authorized by the Administrator to perform the specified duties.

*Interstate.* From any State into or through any other State.

*Limited permit.* An official document of the United States Department of Agriculture authorizing the interstate movement of a regulated article from a

quarantined area, but restricting the areas of the United States into which the regulated article may be moved.

*Liner or rootstock.* Culled seedlings in the growing stage prior to the budding process.

*Move.* Ship, carry, transport, offer for shipment, receive for shipment, or allow to be transported by any means.

*Movement.* The act of shipping, carrying, transporting, offering for shipment, receiving for shipment, or allowing to be transported by any means.

*Nursery.* Any premises, including greenhouses but excluding any grove, at which plants are grown or maintained for propagation or replanting.

*Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

*Public order.* Either an "Agreement to Destroy and Covenant Not to Sue" signed by the grove owner and the Florida Department of Food and Consumer Services, Division of Plant Industry (DPI), or an "Immediate Final Order" issued by DPI, both of which identify citrus trees infected with or exposed to citrus canker and order their destruction.

*Quarantined area.* Any area designated as a quarantined area in accordance with § 301.75-4 of this subpart.

*Regulated article.* Any article listed in § 301.75-3 (a) or (b) of this subpart or designated as a regulated article in accordance with § 301.75-3(c) of this subpart.

*Regulated fruit, regulated plant, regulated seed, regulated tree.* Any fruit, plant, seed, or tree defined as a regulated article.

*Seedlings.* Certified citrus seeds densely planted in seed beds and allowed to germinate and grow until their viability as liners or rootstock can be assessed.

*State.* Each of the 50 States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

*United States.* All of the States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States,

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and all other territories and possessions of the United States.

[55 FR 37450, Sept. 11, 1990, as amended at 61 FR 1521, Jan. 22, 1996; 65 FR 61080, Oct. 16, 2000; 66 FR 32717, June 18, 2001; 71 FR 33172, June 8, 2006]

### § 301.75-2 General prohibitions.

(a) Regulated articles may not be moved interstate from a quarantined area except in accordance with this subpart.

(b) Regulated articles moved from a quarantined area with a limited permit may not be moved interstate into any commercial citrus-producing area, except as follows: The regulated articles may be moved through a commercial citrus-producing area if they are covered, or enclosed in containers or in a compartment of a vehicle, while in the commercial citrus-producing area, and are not unloaded in the commercial citrus-producing area without the permission of an inspector.

(c) Regulated articles moved interstate with a limited permit to an area of the United States that is not a commercial citrus-producing area may not subsequently be moved interstate into any commercial citrus-producing area.

[55 FR 37450, Sept. 11, 1990; 55 FR 48208, Nov. 19, 1990]

### § 301.75-3 Regulated articles.

(a) Plants or plant parts, including fruit and seeds, or any of the following: All species, clones, cultivars, strains, varieties, and hybrids of the genera *Citrus* and *Fortunella*, and all clones, cultivars, strains, varieties, and hybrids of the species *Clausena lansium* and *Poncirus trifoliata*. The most common of these are: lemon, pummelo, grapefruit, key lime, persian lime, tangerine, satsuma, tangor, citron, sweet orange, sour orange, mandarin, tangelo, ethrog, kumquat, limequat, calamondin, trifoliate orange, and wampi.

(b) Grass, plant, and tree clippings.

(c) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a) of this section, when it is determined by an inspector that it presents a risk of spread of citrus canker and the person in possession thereof has actual notice that the product, article, or

means of conveyance is subject to the provisions of this subpart.

[50 FR 51231, Dec. 13, 1985, as amended at 54 FR 12180, Mar. 24, 1989. Redesignated and amended at 55 FR 37450, Sept. 11, 1990]

### § 301.75-4 Quarantined areas.

(a) The following States or portions of States are designated as quarantined areas: The State of Florida.

(b) The Administrator may designate any non-quarantined area as a quarantined area in accordance with paragraphs (c) and (d) of this section upon giving written notice of this designation to the owner or persons in possession of the non-quarantined area. Thereafter, regulated articles may be moved interstate from that area only in accordance with this subpart. As soon as practicable, this area will be added to the list in paragraph (a) of this section, or the Administrator will terminate the designation. The owner or person in possession of an area for which designation is terminated will be given written notice as soon as practicable.

(c) Any State or portion of a State where an infestation is detected will be designated as a quarantined area and will remain so until the area has been without infestation for 2 years.

(d) Less than an entire State will be designated as a quarantined area only if all of the following conditions are met:

(1) *Survey*. No area has been designated a survey area.

(2) *Intrastate movement of regulated articles*. The State enforces restrictions on the intrastate movement of regulated articles from the quarantined area that are at least as stringent as those on the interstate movement of regulated articles from the quarantined area, except as follows:

(i) Regulated fruit may be moved intrastate from a quarantined area for processing into a product other than fresh fruit if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for

processing, and the date the intrastate movement began.

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

(C) The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with §301-11(d) of this subpart before leaving the premises where the regulated fruit is unloaded for processing, and

(D) All leaves, litter, and culls collected from the shipment of regulated fruit at the processing facility are either incinerated at the processing facility or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

(ii) Regulated fruit may be moved intrastate from a quarantined area for packing, either for subsequent interstate movement with a limited permit or for export from the United States, if all of the following conditions are met:

(A) The regulated fruit is accompanied by a document that states the location of the grove in which the regulated fruit was produced, the variety and quantity of regulated fruit being moved intrastate, the address to which the regulated fruit will be delivered for packing, and the date the intrastate movement began.

(B) The regulated fruit and any leaves and litter are completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement.

(C) The vehicles, covers, and any containers used to carry the regulated fruit intrastate are treated in accordance with §301.75-11(d) of this subpart before leaving the premises where the regulated fruit is unloaded for packing.

(D) At the packing plant, the regulated fruit is stored separately from and has no contact with fruit eligible for interstate movement to commercial citrus-producing areas. Any equipment that comes in contact with the regulated fruit at the packing plant is treated in accordance with §301.75-11(d) of this subpart before being used to handle any fruit eligible for interstate

movement to commercial citrus-producing areas, and

(E) All leaves and litter collected from the shipment of regulated fruit at the packing plant are either incinerated at the packing plant or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. All culls collected from the shipment of regulated fruit are either processed into a product other than fresh fruit, incinerated at the packing plant, or buried at a public landfill that is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs. Any culls moved intrastate for processing must be completely covered, or enclosed in containers or in a compartment of a vehicle, during the intrastate movement, and the vehicles, covers, and any containers used to carry the regulated fruit must be treated in accordance with §301.75-11(d) of this subpart before leaving the premises where the regulated fruit is unloaded for processing.

(iii) Grass, tree, and plant clippings may be moved intrastate from the quarantined area for disposal in a public landfill or for composting in a recycling facility, if all of the following conditions are met:

(A) The public landfill or recycling facility is located within the survey area described in paragraph (d)(1) of this section,

(B) The grass, tree, or plant clippings are completely covered during the movement from the quarantined area to the public landfill or recycling facility, and

(C) Any public landfill used is fenced, prohibits the removal of dumped material, and covers dumped material with dirt at the end of every day that dumping occurs.

(3) *Inspections.* (i) In the quarantined area, every regulated plant and regulated tree, except indoor houseplants and regulated plants and regulated trees at nurseries, is inspected for citrus canker at least once a year, between May 1 through December 31, by an inspector.

(ii) In the quarantined area, every regulated plant and regulated tree at

every nursery containing regulated plants or regulated trees is inspected for citrus canker by an inspector at intervals of no more than 45 days.

(4) *Treatment of personnel, vehicles, and equipment.* In the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees, or in providing landscaping or lawn care services on any premises containing regulated plants or regulated trees, must be treated in accordance with § 301.75-11(d) of this subpart upon leaving the grove or premises. All personnel who enter the grove or premises to provide these services must be treated in accordance with § 301.75-11(c) of this subpart upon leaving the grove or premises.

(5) *Destruction of infected plants and trees.* No more than 7 days after a State or Federal laboratory confirms that a regulated plant or regulated tree is infected, the State must provide written notice to the owner of the infected plant or infected tree that the infected plant or infected tree must be destroyed. The owner must have the infected plant or infected tree destroyed within 45 days after receiving the written notice.

(6) *Interstate movement of regulated fruit.* When less than an entire State is designated as a quarantined area, regulated fruit produced in a quarantined area may be moved interstate in accordance with § 301.75-7(a) provided the following additional conditions are met:

(i) During the 2 years before the interstate movement, no plants or plant parts infected with citrus canker were found in the grove producing the regulated fruit and any exposed plants in the grove at high risk for developing citrus canker have been destroyed. Identification of exposed plants at high risk for developing citrus canker will be based on an evaluation of all of the circumstances related to their exposure, including, but not limited to, the following:

(A) The stage of maturity of the exposed plant at the time of exposure and the size and degree of infestation to which the plants were exposed,

(B) The proximity of exposed plants to infected plants or contaminated articles at the time of exposure, and

(C) The length of time the plants were exposed.

(ii) [Reserved]

[55 FR 37450, Sept. 11, 1990; 55 FR 42698, Oct. 23, 1990, as amended at 55 FR 49502, Nov. 29, 1990; 56 FR 8102, Feb. 27, 1991; 57 FR 49374, Nov. 2, 1992; 59 FR 25288, May 16, 1994; 61 FR 1521, Jan. 22, 1996; 64 FR 4780, Feb. 1, 1999; 65 FR 53530, Sept. 5, 2000; 65 FR 57723, Sept. 26, 2000; 67 FR 9390, Mar. 1, 2002; 67 FR 13084, Mar. 21, 2002; 67 FR 18463, Apr. 16, 2002; 67 FR 30771, May 8, 2002; 69 FR 55317, Sept. 14, 2004; 70 FR 9209, Feb. 25, 2005; 70 FR 33268, June 7, 2005; 71 FR 43351, Aug. 1, 2006]

**§ 301.75-5 Commercial citrus-producing areas.**

(a) The following are designated as commercial citrus-producing areas:

American Samoa	Northern Mariana
Arizona	Islands
California	Puerto Rico
Florida	Texas
Guam	Virgin Islands of the
Hawaii	United States
Louisiana	

(b) The list in paragraph (a) of this section is intended to include jurisdictions which have commercial citrus-producing areas. Less than an entire State may be designated as a commercial citrus-producing area only if the Administrator determines that the area not included as a commercial citrus-producing area does not contain commercial citrus plantings; that the State has adopted and is enforcing a prohibition on the intrastate movement from areas not designated as commercial citrus-producing areas to commercial citrus-producing areas of fruit which are designated as regulated articles and which were moved interstate from a quarantined State pursuant to a limited permit; and that the designation of less than the entire State as a commercial citrus-producing area will otherwise be adequate to prevent the interstate spread of citrus canker.

[50 FR 51231, Dec. 13, 1985, 51 FR 2873, Jan. 22, 1986; as amended at 53 FR 13242, Apr. 22, 1988; 53 FR 44173, Nov. 2, 1988. Redesignated at 55 FR 37450, Sept. 11, 1990]



**§ 301.75-6 Interstate movement of regulated articles from a quarantined area, general requirements.**

Regulated articles may be moved interstate from a quarantined area into any area of the United States except commercial citrus-producing areas if all of the following conditions are met:

(a) *Inspections.* (1) In the quarantined area, every regulated plant and regulated tree at every nursery containing regulated plants or regulated trees is inspected for citrus canker by an inspector at intervals of no more than 45 days.

(2) *Treatment of personnel, vehicles, and equipment.* In the quarantined area, all vehicles, equipment, and other articles used in providing inspection, maintenance, harvesting, or related services in any grove containing regulated plants or regulated trees must be treated in accordance with § 301.75-11(d) upon leaving the grove. All personnel who enter the grove or premises to provide these services must be treated in accordance with § 301.75-11(c) upon leaving the grove.

(b) Regulated plants and trees produced in a nursery located in a quarantined area that are not eligible for movement under paragraph (a) of this section may be moved interstate only for immediate export. The regulated plants and trees must be accompanied by a limited permit issued in accordance with § 301.75-12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

[71 FR 43351, Aug. 1, 2006]

**§ 301.75-7 Interstate movement of regulated fruit from a quarantined area.**

(a) *Regulated fruit produced in a quarantined area.* Regulated fruit may be moved interstate from a quarantined area into any area of the United States except commercial citrus-producing areas if all of the following conditions are met:

(1) During the year before the interstate movement, the grove producing the regulated fruit received regulated plants only from the following nurseries:

(i) Nurseries located outside any quarantined areas, or

(ii) Nurseries where an inspector has found every regulated plant free of citrus canker on each of three successive inspections conducted at intervals of no more than 45 days, with the third inspection no more than 45 days before shipment.

(2) No more than 30 days before the beginning of harvest, every tree was inspected by an inspector and the grove was found free of citrus canker. Further, in groves producing limes, every tree was inspected by an inspector and the grove was found free of citrus canker every 120 days or less thereafter for as long as harvest continued.

(3) The regulated fruit was treated in accordance with § 301.75-11(a) of this subpart.

(4) The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than one inch long and attached to the fruit.

(5) The regulated fruit is accompanied by a limited permit issued in accordance with § 301.75-12. The boxes or other containers in which the fruit is packaged must be clearly marked with the statement "Not for distribution in AZ, CA, HI, LA, TX, and American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and Virgin Islands of the United States."

(b) Regulated fruit produced in a quarantined area that is not eligible for movement under paragraph (a) of this section may be moved interstate only for immediate export. The regulated fruit must be accompanied by a limited permit issued in accordance with § 301.75-12 and must be moved in a container sealed by APHIS directly to the port of export in accordance with the conditions of the limited permit.

(c) Regulated fruit not produced in a quarantined area. Regulated fruit not produced in a quarantined area but moved into a quarantined area for packing may be subsequently moved out of the quarantined area only if all the conditions of either paragraph (b)(1) or (b)(2) of this section are met.

(1) Conditions for subsequent movement into any area of the United States except commercial citrus-producing areas. (i) The regulated fruit was accompanied to the packing plant

by a bill of lading stating the location of the grove in which the regulated fruit was produced.

(ii) The regulated fruit was treated in accordance with § 301.75-11(a) of this subpart.

(iii) The regulated fruit is free of leaves, twigs, and other plant parts, except for stems that are less than one inch long and attached to the regulated fruit.

(iv) The regulated fruit is accompanied by a limited permit issued in accordance with § 301.75-12 of this subpart.

(2) Conditions for subsequent movement into any area of the United States including commercial citrus-producing areas. (i) The regulated fruit is accompanied by a bill of lading that states the location of the grove where the fruit was produced, the variety and quantity of fruit, the address to which the fruit will be delivered for packing, and the date the movement of the fruit began.

(ii) The regulated fruit is moved through the quarantined area without being unloaded and no regulated article is added to the shipment in the quarantined area.

(iii) The regulated fruit is completely covered, or enclosed in containers or in a compartment of a vehicle, both during its movement to a packing plant in a quarantined area and during its movement from a packing plant in a quarantined area to destinations outside that quarantined area.

(iv) At the packing plant, regulated fruit produced outside the quarantined areas is stored separately from and has had no contact with regulated fruit produced in a quarantined area. Any equipment at the packing plant that comes in contact with regulated fruit produced in a quarantined area is treated in accordance with § 301.75-11(d) of this subpart before being used to handle any regulated fruit not produced in a quarantined area.

(v) The regulated fruit is treated at the packing plant in accordance with § 301.75-11(a) of this subpart.

(vi) Due to the likelihood that they will be commingled with similar regulated articles collected from regulated fruit produced in a quarantined area, all leaves, litter, and culls collected

from the shipment of regulated fruit at the packing plant are handled as prescribed in § 301.75-4(d)(2)(ii)(E) of this subpart.

(vii) The regulated fruit is accompanied by a certificate issued in accordance with § 301.75-12 of this subpart.

[55 FR 37452, Sept. 11, 1990, as amended at 64 FR 60091, Nov. 4, 1999; 71 FR 43352, Aug. 1, 2006]

**§ 301.75-8 Interstate movement of regulated seed from a quarantined area.**

Regulated seed may be moved interstate from a quarantined area into any area of the United States if all of the following conditions are met:

(a) During the 2 years before the interstate movement, no plants or plant parts infected with or exposed to citrus canker were found in the grove or nursery producing the fruit from which the regulated seed was extracted.

(b) The regulated seed was treated in accordance with § 301.75-11(b) of this subpart.

(c) The regulated seed is accompanied by a certificate issued in accordance with § 301.75-12 of this subpart.

[55 FR 37452, Sept. 11, 1990]

**§ 301.75-9 Interstate movement of regulated articles from a quarantined area for experimental or scientific purposes.**

A regulated article may be moved interstate from a quarantined area if:

(a) Moved by the United States Department of Agriculture for experimental or scientific purposes;

(b) Moved pursuant to a Departmental permit issued for such article by the Administrator;

(c) Moved in accordance with conditions specified on the Departmental permit and determined by the Administrator to be adequate to prevent the spread of citrus canker, i.e., conditions of treatment, processing, growing, shipment, disposal; and

(d) Moved with a Departmental tag or label securely attached to the outside of the container containing the article or securely attached to the article itself if not in a container, with such

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tag or label bearing a Departmental permit number corresponding to the number of the Departmental permit issued for such article.

[50 FR 51231, Dec. 13, 1985. Redesignated and amended at 55 FR 37450, Sept. 11, 1990]

### § 301.75-10 Interstate movement of regulated articles through a quarantined area.

Any regulated article not produced in a quarantined area may be moved interstate through a quarantined area, without a certificate, limited permit, or Departmental permit, if all of the following conditions are met:

(a) The regulated article is accompanied by either: A receipt showing that the regulated article was purchased outside the quarantined area, or a bill of lading stating the location of the premises where the shipment originated, the type and quantity of regulated articles being moved interstate, and the date the interstate movement began.

(b) The regulated article is moved through the quarantined area without being unloaded, and no regulated article, except regulated fruit that qualifies for interstate movement from the quarantined area in accordance with § 301.75-7 of this subpart, is added to the shipment in the quarantined area.

(c) The regulated article is completely covered, or enclosed in containers or in a compartment of a vehicle, during movement through the quarantined area, except that, covering or enclosure is not required if the regulated article is moved through the quarantined area without stopping, except for refueling or for traffic conditions, such as traffic lights or stop signs.

[55 FR 37452, Sept. 11, 1990]

### § 301.75-11 Treatments.

(a) *Regulated fruit.* Regulated fruit for which treatment is required by this subpart must be treated in one of the following ways in the presence of an inspector, or at a facility whose owner operates under a compliance agreement:

(1) The regulated fruit must be thoroughly wetted for at least 2 minutes with a solution containing 200 parts per

million sodium hypochlorite, with the solution maintained at a pH of 6.0 to 7.5, or

(2) The regulated fruit must be thoroughly wetted with a solution containing sodium o-phenyl phenate (SOPP) at a concentration of 1.86 to 2.0 percent of the total solution, for 45 seconds if the solution has sufficient soap or detergent to cause a visible foaming action or for 1 minute if the solution does not contain sufficient soap to cause a visible foaming action.

(3) Sodium hypochlorite and SOPP must be applied in accordance with label directions.

(b) *Regulated seed.* Regulated seed for which treatment is required by this subpart must be extracted from fruit that has been treated in accordance with paragraph (a) of this section. The regulated seed must then be cleaned free of pulp, immersed for 10 minutes in water heated to 125 °F. (51.6 °C.) or higher, then immersed for at least 2 minutes in a solution containing 200 parts per million sodium hypochlorite, with the solution maintained at a pH of 6.0 to 7.5.

(c) *Personnel.* All personnel for which treatment is required by this subpart must clean their hands using one of the following disinfectants:

- (1) Gallex 1027 Antimicrobial Soap;
- (2) Hibiclens;
- (3) Hibistat;
- (4) Sani Clean Hand Soap; or
- (5) Seventy Percent Isopropyl Alcohol.

(d) *Vehicles, equipment, and other articles.* All vehicles, equipment, and other articles for which treatment is required by this subpart must be cleaned and disinfected by removing all plants, leaves, twigs, fruit, and other plant parts from all areas of the equipment or vehicles, including in cracks, under chrome strips, and on the undercarriage of vehicles, and by wetting all surfaces (including the inside of boxes and trailers), to the point of runoff, with one of the following disinfectants:

- (1) A 200-ppm solution of sodium hypochlorite with a pH of 6.0 to 7.5;
- (2) A 0.2-percent solution of a quaternary ammonium chloride (QAC) compound;
- (3) A solution of hot water and detergent, under high pressure (at least 30

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pounds per square inch), at a minimum temperature of 160 °F; or

(4) Steam, at a minimum temperature of 160 °F. at the point of contact.

[50 FR 51231, Dec. 13, 1985, as amended at 53 FR 4006, Feb. 11, 1988; 54 FR 12183, Mar. 24, 1989. Redesignated and amended at 55 FR 37450, Sept. 11, 1990]

### § 301.75-12 Certificates and limited permits.

(a) *Issuance and withdrawal.* (1) Certificates and limited permits may be issued for the interstate movement of regulated articles only by an inspector or by persons operating under a compliance agreement.

(2) A certificate or limited permit may be withdrawn by an inspector if the inspector determines that any of the applicable requirements of this subpart have not been met. The decision of the inspector and the reason for the withdrawal must be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit is withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Administrator must grant or deny the appeal in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

(b) *Attachment and disposition.* (1) Certificates and limited permits accompanying regulated articles interstate must be attached during the interstate movement to one of the following:

(i) The outside of the regulated article, if the regulated article is not packed in a container, or

(ii) The outside of the container in which the regulated article is packed, or

(iii) The consignee's copy of the accompanying waybill, but only if the regulated article is described on the certificate, limited permit, or waybill in a way that allows the regulated article to be identified.

(2) Certificates and limited permits accompanying regulated articles interstate must be given to the consignee at the point of destination.

[55 FR 37453, Sept. 11, 1990]

### § 301.75-13 Compliance agreements.

(a) *Eligibility.* Any person engaged in the business of growing or handling regulated articles for interstate movement may enter into a compliance agreement with the Animal and Plant Health Inspection Service to facilitate the interstate movement of regulated articles in accordance with this subpart. Compliance agreements may be arranged by contacting a local office of Plant Protection and Quarantine, Animal and Plant Health Inspection Service (listed in local telephone directories), or by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

(b) *Cancellation.* Any compliance agreement may be cancelled orally or in writing by an inspector if the inspector finds that the person who entered into the compliance agreement has failed to comply with this subpart. If the person is given notice of cancellation orally, written confirmation of the decision and the reasons for it must be provided as promptly as circumstances allow. Any person whose compliance agreement is cancelled may appeal the decision in writing to the Administrator within 10 days after receiving the written notification. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Administrator must grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing will be held to resolve the conflict. Rules of practice concerning the hearing will be adopted by the Administrator.

[55 FR 37453, Sept. 11, 1990, as amended at 59 FR 67608, Dec. 30, 1994]

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**§ 301.75-14 Costs and charges.**

The services of the inspector shall be furnished without cost. The United States Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions in this subpart, other than for the services of the inspector.

[50 FR 51231, Dec. 13, 1985. Redesignated at 55 FR 37450, Sept. 11, 1990]

**§ 301.75-15 Funds for the replacement of commercial citrus trees.**

Subject to the availability of appropriated funds, the owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees in accordance with the provisions of this section.

(a) *Eligibility.* The owner of a commercial citrus grove may be eligible to receive funds to replace commercial citrus trees removed to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995.

(b) *Tree replacement payments.* The owner of a commercial citrus grove who is eligible under paragraph (a) of this section to receive funds to replace commercial citrus trees will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment of \$26 per tree up to the following per-acre maximum payments:

Variety	Maximum payment per acre
Grapefruit, red seedless .....	\$2,704
Orange, Valencia .....	3,198
Orange, early/midseason/navel .....	3,068
Tangelo .....	2,964
Lime .....	4,004
Other or mixed citrus .....	2,704

(c) *How to apply for tree replacement funds.* The form necessary to apply for funds to replace commercial citrus trees may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Eradication Program, 6901 West Sunrise Boulevard, Plantation, FL 33313. The completed application should be accompanied by a copy of the public order directing the destruction

of the trees and its accompanying inventory that describes the number and the variety of trees removed. Your completed application must be sent to the USDA Citrus Canker Eradication Program, Attn: Commercial Tree Replacement Program, c/o Division of Plant Industry, 3027 Lake Alfred Road, Winter Haven, FL 33881. Claims for trees destroyed on or before October 16, 2000, must have been received on or before December 15, 2000. Claims for trees destroyed after October 16, 2000, must be received within 60 days after the destruction of the trees. The Administrator may, on a case-by-case basis, approve the consideration of late claims when it appears that the claim was late through no fault of the owner of the trees, in the opinion of the Administrator. However, any request for consideration of a late claim must be submitted to the Administrator on or before August 19, 2002 for trees destroyed on or before August 17, 2001, and within 1 year after the destruction of the trees for trees destroyed after August 17, 2001.

(Approved by the Office of Management and Budget under control number 0579-0163)

[65 FR 61080, Oct. 16, 2000, as amended at 66 FR 43066, Aug. 17, 2001]

**§ 301.75-16 Payments for the recovery of lost production income.**

Subject to the availability of appropriated funds, the owner of a commercial citrus grove may be eligible to receive payments in accordance with the provisions of this section to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker.

(a) *Eligibility.* The owner of a commercial citrus grove may be eligible to receive payments to recover income from production that was lost as the result of the removal of commercial citrus trees to control citrus canker if the trees were removed pursuant to a public order between 1986 and 1990 or on or after September 28, 1995.

(b) *Calculation of payments.* (1) The owner of a commercial citrus grove who is eligible under paragraph (a) of this section to receive payments to recover lost production income will, upon approval of an application submitted in

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accordance with paragraph (c) of this section, receive a payment calculated using the following rates:

Citrus variety	Payment (per acre)
Grapefruit .....	\$3,342
Orange, Valencia, and tangerine .....	6,446
Orange, navel (includes early and midseason oranges) .....	6,384
Tangelo .....	1,989
Lime .....	6,503
Other or mixed citrus .....	3,342

(2) *Payment adjustments.* (i) In cases where the owner of a commercial citrus grove had obtained ACC coverage for trees in his or her grove and received crop insurance payments following the destruction of the insured trees, the payment provided for under paragraph (b)(1) of this section will be reduced by the total amount of the crop insurance payments received by the commercial citrus grove's owner for the insured trees.

(ii) In cases where ACC coverage was available for trees in a commercial citrus grove but the owner of the grove had not obtained ACC coverage for his or her insurable trees, the per-acre payment provided for under paragraph (b)(1) of this section will be reduced by 5 percent.

(c) *How to apply for lost production payments.* The form necessary to apply for lost production payments may be obtained from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Eradication Program, 6901 West Sunrise Boulevard, Plantation, FL 33313. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the acreage, number, and the variety of trees removed. Your completed application must be sent to the USDA Citrus Canker Eradication Program, Attn: Lost Production Payments Program, c/o Division of Plant Industry, 3027 Lake Alfred Road, Winter Haven, FL 33881. Claims for losses attributable to the destruction of trees on or before the effective date of this rule must be received on or before September 17, 2001. Claims for losses attributable to the destruction of trees after the effective date of this rule must be received within 60 days after

the destruction of the trees. The Administrator may, on a case-by-case basis, approve the consideration of late claims when the circumstances appear, in the opinion of the Administrator, to warrant such consideration. However, any request for consideration of a late claim must be submitted to the Administrator on or before July 18, 2002 for trees destroyed on or before July 18, 2001, and within 1 year after the destruction of the trees for trees destroyed after July 18, 2001.

[66 FR 32717, June 18, 2001; 66 FR 33740, June 25, 2001; 71 FR 33172, June 8, 2006]

### § 301.75-17 Funds for the replacement of certified citrus nursery stock.

Subject to the availability of appropriated funds, a commercial citrus nursery may be eligible to receive funds to replace certified citrus nursery stock in accordance with the provisions of this section.

(a) *Eligibility.* A commercial citrus nursery may be eligible to receive funds to replace certified citrus nursery stock removed to control citrus canker if the nursery stock was removed pursuant to a public order after September 30, 2001, and before January 10, 2006.

(b) *Certified citrus nursery stock payments.* A commercial citrus nursery that is eligible under paragraph (a) of this section to receive funds to replace certified citrus nursery stock will, upon approval of an application submitted in accordance with paragraph (c) of this section, receive a payment calculated using the following rates:

Type of certified nursery stock	Payment (dollars)
Seedlings .....	0.18/plant.
Liners or rootstock .....	1.50/plant.
Budded field grown citrus plants .....	4.00/plant.
Budded container/greenhouse citrus plants .....	4.50/plant.
Citrus nursery stock in containers for wholesale or retail sale:	
1 gallon .....	5.00/container.
3 gallon .....	10.00/container.
5 gallon .....	15.00/container.
7 gallon .....	20.00/container.
Larger than 7 gallon .....	26.00/container.

(c) *How to apply for certified nursery stock replacement funds.* The form necessary to apply for funds to replace certified nursery stock may be obtained

from any local citrus canker eradication program office in Florida, or from the USDA Citrus Canker Eradication Program, 6901 West Sunrise Boulevard, Plantation, FL 33313. The completed application should be accompanied by a copy of the public order directing the destruction of the trees and its accompanying inventory that describes the number and type of the certified nursery stock removed. If the certified nursery stock was planted in pots, the inventory should specify the size of the container. If the certified nursery stock was bare root plants or in a temporary container, the inventory should specify whether the plant was non-budded or budded. The completed application must be sent to the USDA Citrus Canker Eradication Program, Attn: Commercial Compensation, 10300 Sunset Dr., Suite 150, Miami, FL 33173. Claims for certified nursery stock must be received by August 7, 2006.

[71 FR 33172, June 8, 2006]

### Subpart—Mediterranean Fruit Fly

SOURCE: 56 FR 57576, Nov. 13, 1991, unless otherwise noted.

#### § 301.78 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated article except in accordance with this subpart.<sup>1</sup>

[56 FR 57576, Nov. 13, 1991, as amended at 66 FR 21051, Apr. 27, 2001]

#### § 301.78–1 Definitions.

In this subpart the following definitions apply:

**Administrator.** The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

**Animal and Plant Health Inspection Service.** The Animal and Plant Health

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

Inspection Service of the United States Department of Agriculture (APHIS).

**Certificate.** A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Mediterranean fruit fly and may be moved interstate to any destination.

**Commercially produced.** Fruits and vegetables that an inspector identifies as having been produced for sale and distribution in mass markets. Such identification will be based on a variety of indicators, including, but not limited to: Quantity of produce, monocultural practices, pest management programs, good sanitation practices including destruction of culls, type of packaging, identification of grower or packing house on the packaging, and documents consigning the shipment to a wholesaler or retailer.

**Compliance agreement.** A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart.

**Core area.** The 1 square mile area surrounding each property where Mediterranean fruit fly has been detected.

**Day degrees.** A mathematical construct combining average temperature over time that is used to calculate the length of a Mediterranean fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F: [(Minimum Daily Temp + Maximum Daily Temp)/2] – 54° = Day Degrees.

**Drip line.** The line around the canopy of a plant.

**Infestation.** The presence of the Mediterranean fruit fly or the existence of circumstances that make it reasonable to believe that the Mediterranean fruit fly is present.

**Inspector.** Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

**Interstate.** From any State into or through any other State.

**Limited permit.** A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate

movement in accordance with § 301.78-5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

*Mediterranean fruit fly.* The insect known as Mediterranean fruit fly *Ceratitidis capitata* (Wiedemann) in any stage of development.

*Moved (Move, Movement).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.78-3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.78-3(b) of this subpart.

*Regulated article.* Any article listed in § 301.78-2(a) or (b) of this subpart or otherwise designated as a regulated article in accordance with § 301.78-2(c) of this subpart.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

[56 FR 57576, Nov. 13, 1991; 56 FR 63550, Dec. 4, 1991; 62 FR 33538, June 20, 1997; 62 FR 47556, Sept. 10, 1997]

#### § 301.78-2 Regulated articles.

The following are regulated articles:

(a) The following berries, fruits, nuts, and vegetables.

Almond with husk (*Prunus dulcis* (*P. amygdalus*))  
 Apple (*Malus sylvestris*)  
 Apricot (*Prunus armeniaca*)  
 Avocado (*Persea americana*)  
 Black Myrobalan (*Terminalia cherbula*)  
 Cherries (sweet and sour) (*Prunus avium*, *P. cerasus*)  
 Citrus citron (*Citrus medica*)  
 Date (*Phoenix dactylifera*)  
 Eggplant (*Solanum melongena* L.), other than commercially produced eggplant  
 Fig (*Ficus carica*)  
 Grape (*Vitis* spp.)  
 Grapefruit (*Citrus paradisi*)  
 Guava (*Psidium guajava*)  
 Japanese persimmon (*Diospyros kaki*)  
 Japanese plum (*Prunus salicina*)  
 Kiwi (*Actinidia chinensis*)  
 Kumquat (*Fortunella japonica*)

Lemon (*Citrus limon*) except smooth-skinned lemons harvested for packing by commercial packing houses.

Lemon, Meyer (*Citrus limon* × *reticulata*)

Lemon, Rough (*Citrus jambhiri*)

Lime, sweet (*Citrus aurantiifolia*)

Loquat (*Eriobotrya japonica*)

Mandarin orange (*Citrus reticulata*) (tangerine)

Mango (*Mangifera indica*)

Mock orange (*Murraya exotica*)

Mountain apple (*Syzgium malaccense* (*Eugenia malaccensis*))

Natal plum (*Carissa macrocarpa*)

Nectarine (*Prunus persica* var. *nectarina*)

Olive (*Olea europea*)

Opuntia cactus (*Opuntia* spp.)

Orange, calamondin (*Citrus reticulata* x. *Fortunella*)

Orange, Chinese (*Fortunella japonica*)

Orange, king (*Citrus reticulata* x. *C. sinensis*)

Orange, sweet (*Citrus sinensis*)

Orange, Unshu (*Citrus reticulata* var. *Unshu*)

Papaya (*Carica papaya*)

Peach (*Prunus persica*)

Pear (*Pyrus communis*)

Pepper (*Capsicum frutescens*, *C. annuum*)

Pineapple guava (*Feijoa sellowiana*)

Plum (*Prunus americana*)

Pomegranate (*Punica granatum*)

Prune (*Prunus domestica*)

Pummelo (*Citrus grandis*)

Quince (*Cydonia oblonga*)

Rose apple (*Eugenia jambos*)

Sour orange (*Citrus aurantium*)

Spanish cherry (*Brazilian plum*) (*Eugenia dombeyi* (*E. brasiliensis*))

Strawberry guava (*Psidium cattleianum*)

Surinam cherry (*Eugenia uniflora*)

Tomato (pink and red ripe) (*Lycopersicon esculentum*)

Walnut with husk (*Juglans* spp.)

White sapote (*Casimiroa edulis*)

Yellow oleander (Bestill) (*Thevetia peruviana*)

Any berries, fruits, nuts, or vegetables that are canned or dried or frozen below -17.8 °C. (0 °F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the berries, fruits, nuts, or vegetables listed in paragraph (a) of this section.

(c) Any other article, product, or means of conveyance, not covered by paragraphs (a) or (b) of this section, that presents a risk of spread of the Mediterranean fruit fly and an inspector notifies the person in possession of it that the article, product, or means of conveyance is subject to the restrictions of this subpart.

[56 FR 57576, Nov. 13, 1991, as amended at 59 FR 25791, May 18, 1994; 62 FR 33538, June 20, 1997; 62 FR 47556, Sept. 10, 1997]



**§ 301.78-3 Quarantined areas.**

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator shall list as a quarantined area in paragraph (c) of this section, each State, or each portion of a State, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Mediterranean fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the Mediterranean fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing such area. The Administrator will give a copy of this regulation along with a written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation shall be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the Mediterranean fruit fly.

[56 FR 57576, Nov. 13, 1991]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 301.78-3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

**§ 301.78-4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

Any regulated article may be moved interstate from a quarantined area<sup>2</sup> only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.78-5 and 301.78-8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article is moving as air cargo or as a meal intended for in-flight consumption, and is transiting Los Angeles International Airport, California;

(2) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(3) The point of origin of the regulated article is indicated on the waybill.

(c) Without a certificate or limited permit, if:

(1) The regulated article originated outside any quarantined area and is moved through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

<sup>2</sup>Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(d) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of Mediterranean fruit fly; and

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579-0088)

[56 FR 57576, Nov. 13, 1991, as amended at 57 FR 54169, Nov. 17, 1992]

**§ 301.78-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate shall be issued by an inspector<sup>3</sup> for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.78-10 of this subpart; or

(ii) Based on inspection of the premises of origin, that the premises are free from the Mediterranean fruit fly; or

(iii) Based on inspection of the regulated article, that it is free of Mediterranean fruit fly; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Mediterranean fruit fly; and

(3) The regulated article is to be moved in compliance with any addi-

tional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>4</sup> to prevent the spread of the Mediterranean fruit fly; and

(4) The regulated articles is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated articles.

(b) An inspector<sup>5</sup> will issue a limited permit for the interstate movement of a regulated article if the inspector determines that—

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Mediterranean fruit fly because life stages of the Mediterranean fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the Mediterranean fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for

<sup>3</sup>Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>4</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

<sup>5</sup>See footnote 3 to § 301.78-5(a).

interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if he or she determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[56 FR 57576, Nov. 13, 1991, as amended at 59 FR 67608, Dec. 30, 1994; 66 FR 21051, Apr. 27, 2001]

**§ 301.78-6 Compliance agreements and cancellation.**

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart.<sup>6</sup>

(b) Any compliance agreement may be canceled orally or in writing by an

<sup>6</sup>Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

[56 FR 57576, Nov. 13, 1991, as amended at 59 FR 67609, Dec. 30, 1994]

**§ 301.78-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.78-5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector,<sup>7</sup> as far in advance of the desired interstate movement as possible (but no less than 48 hours before the desired interstate movement).

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

**§ 301.78-8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be attached to the outside of the container containing the regulated article, attached to the regulated article itself if not in a container, or attached to the consignee's copy of the accompanying waybill: *Provided however*, that the requirements of this section may be met

<sup>7</sup>See footnote 3 to § 301.78-5(a).

by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579-0088)

#### § 301.78-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

#### § 301.78-10 Treatments.

Treatment schedules listed in part 305 of this chapter to destroy Mediterranean fruit fly are authorized for use on regulated articles. The following treatments may be used for the regulated articles indicated:

(a) Fruits and vegetables.

(1) *Bell Pepper*—(i) *Vapor Heat*. Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of bell pepper reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

(2) *Tomato*—(i) *Fumigation*. Fumigate with methyl bromide at normal atmospheric pressure with 32 g/m<sup>3</sup> (2 lb/1000 ft<sup>3</sup>) for 3½ hours at 21 °C. (70 °F.) or above.

(ii) *Vapor heat*. Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of tomato reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¾ hours, then immediately cool.

NOTE: Commodities should be tested by the shipper to determine each commodity's tolerance to the treatment before commercial shipments are attempted. The USDA is not liable for damages caused by this quarantine.

(b) *Regulated citrus fruit that has been harvested*. (1) Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m<sup>3</sup> (2 pounds per 1000

cubic feet) for 3½ hours at 21 °C. (70 °F.) or above.

NOTE: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

(2) *Fumigation plus refrigeration*: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m<sup>3</sup> (2 pounds per 1000 cubic feet) at 21 °C. (70 °F.) or above.

Fumigation exposure time	Refrigeration
2 hours .....	4 days at 0.55 to 0.7 °C. (33 to 37 °F.); or 11 days at 3.33 to 8.3 °C. (38 to 47 °F.).
2½ hours .....	4 days at 1.11 to 4.44 °C. (34 to 40 °F.); or 6 days at 5.0 to 8.33 °C. (41 to 47 °F.); or 10 days at 8.88 to 13.33 °C. (48 to 56 °F.).
3 hours .....	3 days at 6.11 to 8.33 °C. (43 to 47 °F.); or 6 days at 9.88 to 13.33 °C. (48 to 56 °F.).

NOTE: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

Time lapse between fumigation and start of cooling not to exceed 24 hours. Chamber load not to exceed 80 percent of volume.

(3) *Cold treatment*: 14 days at 1.11 °C. (34 °F.) or below; 16 days at 1.67 °C. (35 °F.) or below; or 18 days at 2.22 °C. (36 °F.) or below.

(c) *Approved irradiation treatment*. Irradiation, carried out in accordance with the provisions of part 305 of this chapter, is approved as a treatment for any berry, fruit, nut, or vegetable listed as a regulated article in § 301.78-2(a) of this subpart.

(1) *Approved facility*. The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service. In order to be approved, a facility must:

(i) Be capable of administering a minimum absorbed ionizing radiation dose of 225 Gray (22.5 krad) to the fruits and vegetables;<sup>8</sup>

(ii) Be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables,

<sup>8</sup>The maximum absorbed ionizing radiation dose and the irradiation of food is regulated by the Food and Drug Administration under 21 CFR part 179.

except that fruits and vegetables traveling by conveyor directly into the irradiation chamber may pass through an area that would otherwise be separated. The locations must be separated by a permanent physical barrier such as a wall or chain link fence 6 or more feet high to prevent transfer of cartons;

(iii) Complete a compliance agreement with the Animal and Plant Health Inspection Service as provided in § 301.78-6 of this subpart; and

(iv) Be certified by Plant Protection and Quarantine for initial use and annually for subsequent use. Recertification is required in the event that an increase or decrease in radioisotope or a major modification to equipment that affects the delivered dose. Recertification may be required in cases where a significant variance in dose delivery is indicated.

(2) *Treatment monitoring.* Treatment must be carried out under the monitoring of an inspector. This monitoring must include inspection of treatment records and unannounced inspection visits to the facility by an inspector. Facilities that carry out continual irradiation operations must notify an inspector at least 24 hours before the date of operations. Facilities that carry out periodic irradiation operations must notify an inspector of scheduled operations at least 24 hours before scheduled operations.<sup>9</sup>

(3) *Packaging.* Fruits and vegetables that are treated within a quarantined area must be packaged in the following manner:

(i) The cartons must have no openings that will allow the entry of fruit flies and must be sealed with seals that will visually indicate if the cartons have been opened. They may be constructed of any material that prevents the entry of fruit flies and prevents oviposition by fruit flies into the fruit in the carton.<sup>10</sup>

(ii) The pallet-load of cartons must be wrapped before it leaves the irradiation facility in one of the following ways:

(A) With polyethylene sheet wrap;

(B) With net wrapping; or

(C) With strapping so that each carton on an outside row of the pallet load is constrained by a metal or plastic strap.

(iii) Packaging must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment.

(4) *Dosage.* The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 225 Gray (22.5 krad).<sup>11</sup>

(5) *Dosimetry systems.* (i) Dosimetry must demonstrate that the absorbed dose, including areas of minimum and maximum dose, is mapped, controlled, and recorded.

(ii) Absorbed dose must be measured using a dosimetry system that can accurately measure an adsorbed dose of 225 Gray (22.5 krad).

(iii) The utilization of the dosimetry system, including its calibration and the number and placement of dosimeters used, must be in accordance with the American Society for Testing and Materials (ASTM) standards.<sup>12</sup>

(6) *Records.* Records or invoices for each treated lot must be made available for inspection by an inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays). An irradiation processor must maintain records as specified in this section for a period of time that exceeds the shelf life of the irradiated food product by 1 year, and must make these records available for inspection by an inspector. These records must include the lot identification, scheduled process, evidence of compliance with the scheduled process, ionizing energy source, source calibration,

<sup>9</sup>Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

<sup>10</sup>If there is a question as to the adequacy of a carton, send a request for approval of the carton, together with a sample carton, to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine,

Center for Plant Health Science and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606.

<sup>11</sup>See footnote 8.

<sup>12</sup>Designation E 1261, "Standard Guide for Selection and Calibration of Dosimetry Systems for Radiation Processing," American Society for Testing and Materials, Annual Book of ASTM Standards.

dosimetry, dose distribution in the product, and the date of irradiation.

(7) *Request for approval and inspection of facility.* Persons requesting approval of an irradiation treatment facility and treatment protocol must submit the request for approval in writing to the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Center for Plant Health Science and Technology, 1017 Main Campus Drive, suite 2500, Raleigh, NC 27606. Before the Administrator determines whether an irradiation facility is eligible for approval, an inspector will make a personal inspection of the facility to determine whether it complies with the standards of paragraph (c)(1) of this section.

(8) *Denial and withdrawal of approval.*

(i) The Administrator will withdraw the approval of any irradiation treatment facility when the irradiation processor requests in writing the withdrawal of approval.

(ii) The Administrator will deny or withdraw approval of an irradiation treatment facility when any provision of this section is not met. Before withdrawing or denying approval, the Administrator will inform the irradiation processor in writing of the reasons for the proposed action and provide the irradiation processor with an opportunity to respond. The Administrator will give the irradiation processor an opportunity for a hearing regarding any dispute of a material fact, in accordance with rules of practice that will be adopted for the proceeding. However, the Administrator will suspend approval pending final determination in the proceeding, if he or she determines that suspension is necessary to prevent the spread of any dangerous insect infestation. The suspension will be effective upon oral or written notification, whichever is earlier, to the irradiation processor. In the event of oral notification, written confirmation will be given to the irradiation processor within 10 days of the oral notification. The suspension will continue in effect pending completion of the proceeding and any judicial review of the proceeding.

(9) *Department not responsible for damage.* This treatment is approved to assure quarantine security against Medi-

terranean fruit fly. From the literature available, the fruits and vegetables authorized for treatment under this section are believed tolerant to the treatment; however, the facility operator and shipper are responsible for determination of tolerance. The Department of Agriculture and its inspectors assume no responsibility for any loss or damage resulting from any treatment prescribed or supervised. Additionally, the Nuclear Regulatory Commission is responsible for ensuring that irradiation facilities are constructed and operated in a safe manner. Further, the Food and Drug Administration is responsible for ensuring that irradiated foods are safe and wholesome for human consumption.

(d) *Premises.* A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with either malathion or spinosad bait spray. These treatments must take place at 6 to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Mediterranean fruit fly. Determination of the time period must be based on day degrees. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied at a rate of 1.2 fluid ounces of technical grade malathion (1.4 ounces by weight) and 10.8 fluid ounces of protein hydrolysate (13.2 ounces by weight) per acre, for a total of 12 fluid ounces per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

(e) *Soil.* Soil within the drip area of plants that are producing or have produced the berries, fruits, nuts, and vegetables listed in § 301.78-2(a) of this subpart: Apply diazinon at the rate of 5 pounds actual ingredient per acre to the soil within the drip area with sufficient water to wet the soil to a depth of at least ½ inch. Both immersion and

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pour-on treatment procedures are also acceptable.

(Approved by the Office of Management and Budget under control number 0579-0088)

[56 FR 57576, Nov. 13, 1991; 56 FR 63550, Dec. 4, 1991, as amended at 58 FR 63031, Nov. 30, 1993; 59 FR 25791, May 18, 1994; 60 FR 52834, Oct. 11, 1995; 62 FR 47557, Sept. 10, 1997; 65 FR 54742, Sept. 11, 2000; 67 FR 8464, Feb. 25, 2002; 67 FR 63536, Oct. 15, 2002; 70 FR 33268, June 7, 2005; 71 FR 4459, Jan. 27, 2006; 71 FR 7395, Feb. 13, 2006]

### Subpart—Witchweed

#### QUARANTINE AND REGULATIONS

#### § 301.80 Quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754), the Secretary of Agriculture quarantines the States of North Carolina and South Carolina in order to prevent the spread of witchweed (*Striga* spp.), a parasitic plant that causes a dangerous disease of corn, sorghum, and other crops of the grass family and is not widely prevalent or distributed within and throughout the United States. Through the aforementioned authorities, the Secretary imposes a quarantine on the States of North Carolina and South Carolina with respect to the interstate movement from those States of articles described in paragraph (b) of this section, issues regulations in this subpart governing the movement of such articles, and gives notice of this quarantine action.

(b) *Quarantine restrictions on interstate movement of specified regulated articles.* No common carrier or other person shall move interstate from any quarantined State any of the following articles (defined in § 301.80–1(p) as regulated articles), except in accordance with the conditions prescribed in this subpart:

(1) Soil, compost, peat, humus, muck, and decomposed manure, separately or with other things; sand; and gravel.

(2) Plants with roots.

(3) Grass sod.

(4) Plant crowns and roots for propagation.

(5) True bulbs, corms, rhizomes, and tubers of ornamental plants.

(6) Root crops, except those from which all soil has been removed.

(7) Peanuts in shells and peanut shells, except boiled or roasted peanuts.

(8) Small grains and soybeans.

(9) Hay, straw, fodder, and plant litter of any kind.

(10) Seed cotton and gin trash.

(11) Stumpwood.

(12) Long green cucumbers, cantaloupes, peppers, squash, tomatoes, and watermelons, except those from which all soil has been removed.

(13) Pickling cucumbers, string beans, and field peas.

(14) Cabbage, except firm heads with loose outer leaves removed.

(15) Leaf tobacco, except flue-cured leaf tobacco.

(16) Ear corn, except shucked ear corn.

(17) Sorghum.

(18) Used crates, boxes, burlap bags, and cotton-picking sacks, and other used farm products containers.

(19) Used farm tools.

(20) Used mechanized cultivating equipment and used harvesting equipment.

(21) Used mechanized soil-moving equipment.

(22) Any other products, articles, or means of conveyance, of any character whatsoever, not covered by paragraphs (b) (1) through (20) of this section, when it is determined by an inspector that they present a hazard of spread of witchweed, and the person in possession thereof has been so notified.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27372, July 2, 1976; 58 FR 216, Jan. 5, 1993; 66 FR 21052, Apr. 27, 2001]

#### § 301.80–1 Definitions.

Terms used in the singular form in this subpart shall be deemed to import the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

*Certificate.* A document issued or authorized to be issued under this subpart by an inspector to allow the interstate movement of regulated articles to any destination.

*Compliance agreement.* A written agreement between a person engaged in growing, handling, or moving regulated articles, and the Plant Protection and Quarantine Programs, wherein the former agrees to comply with the requirements of this subpart identified in the agreement by the inspector who executes the agreement on behalf of the Plant Protection and Quarantine Programs as applicable to the operations of such person.

*Deputy Administrator.* The Deputy Administrator of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of said Service to whom authority to act in his stead has been or may hereafter be delegated.

*Farm tools.* An instrument worked or used by hand, e.g., hoes, rakes, shovels, axes, hammers, and saws.

*Generally infested area.* Any part of a regulated area not designated as a suppressive area in accordance with § 301.80-2.

*Infestation.* The presence of witchweed or the existence of circumstances that make it reasonable to believe that witchweed is present.

*Inspector.* Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator to enforce the provisions of the quarantine and regulations in this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document issued or authorized to be issued by an inspector to allow the interstate movement of noncertifiable regulated articles to a specified destination for limited handling, utilization, or processing, or for treatment.

*Mechanized cultivating equipment; and mechanized harvesting equipment.* Mechanized equipment used for soil tillage, including tillage attachments for farm tractors, e.g., tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes, e.g., mechanical cotton harvesters, hay balers, corn pickers, and combines.

*Mechanized soil-moving equipment.* Mechanized equipment used to move or transport soil, e.g., draglines, bulldozers, road scrapers, and dumptrucks.

*Moved (movement, move).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved by any means. "Movement" and "move" shall be construed accordingly.

*Person.* Any individual, corporation, company, society, or association, or other organized group of any of the foregoing.

*Plant Protection and Quarantine Programs.* The organizational unit with the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

*Regulated area.* Any quarantined State, or any portion thereof, designated as a regulated area in § 301.80-2a or otherwise designated as a regulated area in accordance with § 301.80-2(b).

*Regulated articles.* Any articles described in § 301.80(b).

*Restricted destination permit.* A document issued or authorized to be issued by an inspector to allow the interstate movement of regulated articles not certifiable under all applicable Federal domestic plant quarantines to a specified destination for other than scientific purposes.

*Scientific permit.* A document issued by the Deputy Administrator to allow the interstate movement to a specified destination of regulated articles for scientific purposes.

*Soil.* That part of the upper layer of earth in which plants can grow.

*State.* Any State, territory, or district of the United States, including Puerto Rico.

*Suppressive area.* That portion of a regulated area where eradication of infestation is undertaken as an objective, as designated by the Deputy Administrator under § 301.80-2(a).

*Treatment Manual.* The provisions currently contained in the "Manual of Administratively Authorized Procedures to be Used Under the Witchweed



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Quarantine” and the “Fumigation Procedures Manual” and any amendments thereto.<sup>1</sup>

*Witchweed.* Parasitic plants of the genus *Striga* and reproductive parts thereof, including seeds.

[41 FR 27372, July 2, 1976, as amended at 66 FR 21052, Apr. 27, 2001]

### **§ 301.80-2 Authorization to designate, and terminate designation of, regulated areas and suppressive or generally infested areas; and to exempt articles from certification, permit, or other requirements.**

(a) *Regulated areas and suppressive or generally infested areas.* The Deputy Administrator shall designate as regulated areas, in a supplemental regulation designated as § 301.80-2a, each quarantined State, or each portion thereof in which witchweed has been found or in which there is reason to believe that witchweed is present or which it is deemed necessary to regulate because of its proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator, in the supplemental regulation, may designate any regulated area or portion thereof, as a suppressive area or a generally infested area in accordance with the definitions thereof in § 301.80-1. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of witchweed.

(b) *Temporary designation of regulated areas and suppressive or generally in-*

*fested areas.* The Deputy Administrator or an authorized inspector may temporarily designate any other premises in a quarantined State as a regulated area and may designate the regulated area or portions thereof as a suppressive or generally infested area, in accordance with the criteria specified in paragraph (a) of this section for designating such area, by serving written notice thereof on the owner or person in possession of such premises, and thereafter the interstate movement of regulated articles from such premises by any person having notice of the designation shall be subject to the applicable provisions of this subpart. As soon as practicable, such premises shall be added to the list in § 301.80-2a if a basis then exists for their designation.

(c) *Termination of designation as a regulated area and a suppressive or generally infested area.* The Deputy Administrator shall terminate the designation provided for under paragraph (a) of this section of any area designated as a regulated area or a suppressive or a generally infested area when he determines that such designation is no longer required under the criteria specified in paragraph (a) of this section. The Deputy Administrator or an inspector shall terminate the designation provided for under paragraph (b) of this section of any premises designated as a regulated area or a suppressive or a generally infested area when he determines that such designation is no longer required under the criteria specified in paragraph (a) of this section, and notice thereof shall be given to the owner or person in possession of the premises.

(d) *Exemption of articles from certification, permit, or other requirements.* The Deputy Administrator may, in a supplemental regulation designated as § 301.80-2b, list regulated articles or movements of regulated articles which shall be exempt from the certification, permit, or other requirements of this subpart under such conditions as he may prescribe, if he finds that facts exist as to the pest risk involved in the movement of such regulated articles which make it safe to so relieve such requirements.

[41 FR 27372, July 2, 1976]

<sup>1</sup>Pamphlets containing such provisions are available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, or from an inspector.

## Animal and Plant Health Inspection Service, USDA

## § 301.80-2a

### § 301.80-2a Regulated areas; generally infested and suppressive areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of this subpart.

#### NORTH CAROLINA

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

*Bladen County.* That area north of a line beginning at the intersection of the Robeson-Bladen County line and State Highway 211, then east along State Highway 211 Bypass to State Highway 242, then northeast along State Highway 242 to U.S. Highway 701, then north along U.S. Highway 701 to the Cape Fear River, then southeast along the Cape Fear River to the Bladen-Columbus County line.

The Hardison, H.B., farm located on a field road 0.25 mile northwest of its intersection with State Secondary Road 1719 and 0.2 mile west of its intersection with State Secondary Road 1797.

*Cumberland County.* That area bounded on the west by the Cape Fear River, then by a line running east and northeast along the Fayetteville city limits to U.S. Highway 301, then northeast along U.S. Highway 301 to Interstate 95, then northeast along Interstate 95 to U.S. Highway 13, then east and northeast along U.S. Highway 13 to the Cumberland-Sampson County line.

The Bullock, Berline, farm located on the north side of State Secondary Road 1722 and 0.2 mile west of its intersection with U.S. Highway 301.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its intersection with U.S. Highway 301.

*Pender County.* The Hardie, George, farm located along a private drive on the southeast side of State Secondary Road 1104, 0.3 mile north of its intersection with State Secondary Road 1103.

The Peterson, Grady, farm located along a private drive on the southeast side of State Secondary Road 1104, 0.3 mile north of its intersection with State Secondary Road 1103.

The Zibelin, John, farm located 0.5 mile east of State Secondary Road 1105, 1.2 miles south of its intersection with State Secondary Road 1104.

*Robeson County.* That area south of a line beginning at the intersection of State Highway 211 with the Robeson-Bladen County line, then west to its intersection with the Robeson-Hoke County line.

The Biggs, Furman, farm located on the west side of State Secondary Road 1956, 0.3 mile southeast of its intersection with State Secondary Road 1959.

The Blanks, Donnie, farm located on the west side of State Secondary Road 1761, 0.3 mile north of its junction with State Secondary Road 1758.

The Britt, R.B., farm located on both sides of State Secondary Road 1765, 0.2 mile southeast of its junction with State Secondary Road 1758.

The Burnett, C.C., farm located on the north side of State Secondary Road 1757, 0.2 mile northeast of its junction with State Road 1001.

The McMillan, J.P., farm located on both sides of State Secondary Road 1770, 1.25 miles north of its junction with State Highway 211.

The McNair Investment farm located on the north side of State Secondary Road 1764, 1.5 miles west of its intersection with State Secondary Road 1762.

*Sampson County.* That area south of a line beginning at a point where U.S. Highway 421 intersects the Sampson-Harnett County line, then southeast along U.S. Highway 421 to the Sampson-Pender County line.

#### SOUTH CAROLINA

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

*Horry County.* That area bounded by a line beginning at a point where U.S. Highway 9 intersects the Horry-Marion County line, then east along U.S. Highway 9 to State Secondary Highway 19, then southeast along State Secondary Highway 19 to Lake Swamp, then southwest along Lake Swamp to State Secondary Highway 99, then south and southwest along State Secondary Highway 99 to U.S. Highway 501, then west along U.S. Highway 501 to the Little Pee Dee River, then north along the Little Pee Dee River to the Lumber River, then north along the Lumber River to U.S. Highway 9, the point of beginning.

The Adams, Lena J., farm located on the west side of State Highway 90, 1.2 miles west of its junction with the State Secondary Road known as Pint Circle.

The Chestnut, Alberta, farm located on the west side of State Highway 90, 0.3 mile west of its junction with the State Secondary Road known as Pint Circle.

The James, Norman, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Thompson Road.

The Jenerette, Miriam, farm located on the east side of State Secondary Road 23, 3.4 miles south of its junction with State Highway 917.

The Lewis, Lula, farm located on the west side of State Highway 90, 0.4 mile west of its

junction with an unpaved road known as Livingston Lane and 0.1 mile east of its junction with an unpaved road known as Beecher Lane.

The Livingston, Donnie, farm located on the east side of State Highway 90, 0.5 mile southeast of its junction with the State Secondary Road known as Bombing Range Road, 0.6 mile southeast of its junction with an unpaved road known as Dewitt Road, and 0.2 mile west of its junction with an unpaved road known as Sand Hill Lane.

The Livingston, Pittman, farm located on the east side of State Highway 90, 2.2 miles north of its junction with State Highway 22.

The Montgomery, Harry, farm located on the northwest side of State Highway 76 in the Causey community, 2.2 miles northwest of its junction with the State Secondary Road known as Sand Trap Road, 3.7 miles northeast of its junction with an unpaved road known as Causey Road, 0.1 mile northwest of its junction with an unpaved road known as Griffins Landing, and 0.15 mile northeast of its junction with an unpaved road known as Flat River Road.

The Permenter, Lucille, farm located on the east and west side of State Highway 57 at Worthar Cutoff junction, 0.5 mile south of the North Carolina/South Carolina State line.

The Stanley, Andrew, farm located on the east side of State Highway 90, 0.2 mile east of its junction with an unpaved road known as Andrew Road.

The Todd, Don, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Tilley Swamp Road.

The Vereen, Rufus C., farm located east of State Highway 90, 0.4 mile east of its junction with the State Secondary Road known as Old Chesterfield Road.

*Marion County.* The Brown, Lewis, farm located on the south side of State Highway 76, 1.4 miles south of its junction with State Secondary Road 201.

The Fowler, Herbert, Estate, farm located east of State Highway 501, 1.4 miles northeast of its junction with an unpaved road known as Bowling Green Road and 0.1 mile north of its junction with an unpaved road known as Salem Road.

The Rowell, Molite, farm located on the west side of State Secondary Road 9, 0.2 mile west of its junction with an unpaved road known as Molite Road.

The Taw Caw Plantation farm located on the south side of State Highway 76, 1.3 miles south of its junction with an unpaved road known as Bubba Road.

[68 FR 6604, Feb. 10, 2003, as amended at 68 FR 51876, Aug. 29, 2003]

#### § 301.80-2b Exempted articles.<sup>1</sup>

(a) The following articles are exempt from the certification and permit and other requirements of this subpart if they meet the applicable conditions prescribed in paragraphs (a) (1) through (5) of this section and have not been exposed to infestation after cleaning or other handling as prescribed in said paragraph:

(1) Small grains, if harvested in bulk or into new or treated containers, and if the grains and containers for the grains have not come in contact with the soil or if they have been cleaned at a designed facility.<sup>2</sup>

(2) Soybeans, when determined by an inspector that the soybeans were grown, harvested, and handled in a manner to prevent contamination from witchweed seed.

(3) Pickling cucumbers, string beans, and field peas, if washed free of soil with running water.

(4) Used farm tools, if cleaned free of soil.

(5) Used mechanized cultivating equipment and used mechanized soil-moving equipment, if cleaned free of soil.

(b) The following article is exempt from the certification and permit requirements of § 301.80-4 under the applicable conditions as prescribed in paragraph (b)(1) of this section:

(1) Seed cotton, if moving to a designated gin.<sup>2</sup>

[42 FR 56334, Oct. 25, 1977, as amended at 53 FR 24924, July 1, 1988]

#### § 301.80-3 Conditions governing the interstate movement of regulated articles from quarantined States.<sup>3</sup>

(a) Any regulated articles, except soil samples for processing, testing, or analysis, may be moved interstate

<sup>1</sup>The articles hereby exempted remain subject to applicable restrictions under other quarantines.

<sup>2</sup>Information as to designated facilities, gins, oil mills, and processing plants may be obtained from an inspector. Any facility, gin, oil mill, or processing plant is eligible for designation under this subpart if the operator thereof enters into a compliance agreement (as defined in § 301.80-1(b)).

<sup>3</sup>Requirements under all other applicable Federal domestic plant quarantines must also be met.

from any quarantined State under the following conditions:

(1) With certificate or permit issued and attached in accordance with §§ 301.80-4 and 301.80-7, if moved:

(i) From any generally infested area or any suppressive area into or through any point outside of the regulated areas; or

(ii) From any generally infested area into or through any suppressive area; or

(iii) Between any noncontiguous suppressive areas; or

(iv) Between contiguous suppressive areas when it is determined by an inspector that the regulated articles present a hazard of the spread of the witchweed and the person in possession thereof has been so notified; or

(v) Through or reshipped from any regulated area when such movement is not authorized under paragraph (a)(2)(v) of this section; or

(2) Without certificate or permit if moved:

(i) From any regulated area under the provisions of § 301.80-2b which exempts certain articles from certificate and permit requirements; or

(ii) From a generally infested area to a contiguous generally infested area; or

(iii) From a suppressive area to a contiguous generally infested area; or

(iv) Between contiguous suppressive areas unless the person in possession of the articles has been notified by an inspector that a hazard of spread of the witchweed exists; or

(v) Through or reshipped from any regulated area if the articles originated outside of any regulated area and if the point of origin of the articles is clearly indicated, their identity has been maintained, and they have been safeguarded against infestation while in the regulated area in a manner satisfactory to the inspector; or

(3) From any area outside the regulated areas, if moved:

(i) With a certificate or permit attached; or

(ii) Without a certificate or permit, if:

(A) The regulated articles are exempt from certification and permit requirements under the provisions of § 301.80-2b; or

(B) The point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

(b) Unless specifically authorized by the Deputy Administrator in emergency situations, soil samples for processing, testing, or analysis may be moved interstate from any regulated area only to laboratories approved<sup>4</sup> by the Deputy Administrator and so listed by him in a supplemental regulation.<sup>5</sup> A certificate or permit will not be required to be attached to such soil samples except in those emergency situations where the Deputy Administrator has authorized such movement to another destination with a certificate or permit issued and attached in accordance with §§ 301.80-4(d) and 301.80-7. Soil samples originating in areas outside of the regulated areas will not require such a certificate or permit and their movement is not restricted to approved laboratories if the point of origin of such samples is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

[41 FR 27373, July 2, 1976]

#### **§ 301.80-4 Issuance and cancellation of certificates and permits.**

(a) Certificates may be issued for any regulated articles (except soil samples for processing, testing, or analysis) by an inspector if he determines that they are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles and:

(1) Have originated in noninfested premises in a regulated area and have not been exposed to infestation while within the regulated areas; or

(2) Have been treated to destroy infestation in accordance with the treatment manual; or

<sup>4</sup>Pamphlets containing provisions for laboratory approval may be obtained from the Deputy Administrator, Plant Protection and Quarantine Programs, APHIS, U.S. Department of Agriculture, Washington, DC 20250.

<sup>5</sup>For list of approved laboratories, see (41 FR 4615 and amendments thereof).

(3) Have been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted thereby.

(b) Limited permits may be issued by an inspector to allow interstate movement of regulated articles (except soil samples for processing, testing, or analysis) not eligible for certification under this subpart, to specified destinations for limited handling, utilization, or processing, or for treatment in accordance with the treatment manual, when upon evaluation of the circumstances involved in each specific case he determines that such movement will not result in the spread of witchweed and requirements of other applicable Federal domestic plant quarantines have been met.

(c) Restricted destination permits may be issued by an inspector to allow the interstate movement (for other than scientific purposes) of regulated articles (except soil samples for processing, testing, or analysis) to any destination permitted under all applicable Federal domestic plant quarantines if such articles are not eligible for certification under all such quarantines but would otherwise qualify for certification under this subpart.

(d) Scientific permits to allow the interstate movement of regulated articles, and certificates or permits to allow the movement of soil samples for processing, testing, or analysis in emergency situations, may be issued by the Deputy Administrator under such conditions as may be prescribed in each specific case by the Deputy Administrator to prevent the spread of witchweed.

(e) Certificate, limited permit, and restricted destination permit forms may be issued by an inspector to any person for use by the latter for subsequent shipments of regulated articles (except soil samples for processing, testing, or analysis) provided such person is operating under a compliance agreement; and any such person may be authorized by an inspector to reproduce such forms on shipping containers or otherwise. Any such person may execute and issue the certificate forms, or reproductions of such forms, for the interstate movement of regulated articles from the premises of such person

identified in the compliance agreement if such person has treated such regulated articles to destroy infestation in accordance with the treatment manual, and if such regulated articles are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles. Any such person may execute and issue the limited permit forms, or reproductions of such forms, for interstate movement of regulated articles to specified destinations when the inspector has made the determinations specified in paragraph (b) of this section. Any such person may execute and issue the restricted destination permit forms, or reproductions of such forms, for the interstate movement of regulated articles not eligible for certification under all Federal domestic plant quarantines applicable to such articles, under the conditions specified in paragraph (c) of this section.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by the inspector or the Deputy Administrator if he determines that the holder thereof has not complied with any condition for the use of such document imposed by this subpart. As soon as possible after such withdrawal, the holder of the certificate or permit shall be notified in writing by the Deputy Administrator or an inspector of the reason therefor and afforded reasonable opportunity to present his views thereon, and if there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27374, July 2, 1976]

**§ 301.80-5 Compliance agreements; and cancellation thereof.**

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Compliance agreement forms may be obtained from the Deputy Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement whenever he finds that such other party has failed

to comply with the conditions of the agreement. As soon as possible after such cancellation, such party shall be notified in writing by the Deputy Administrator or an inspector of the reason therefor and afforded reasonable opportunity to present views thereon, and if there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27374, July 2, 1976]

**§ 301.80-6 Assembly and inspection of regulated articles.**

Persons (other than those authorized to use certificates, limited permits, or restricted destination permits, or reproductions thereof, under § 301.80-4(e)) who desire to move interstate regulated articles which must be accompanied by a certificate or permit shall, as far in advance as possible, request an inspector to examine the articles prior to movement. Such articles shall be assembled at such points and in such a manner as the inspector designates to facilitate inspection.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27374, July 2, 1976]

**§ 301.80-7 Attachment and disposition of certificates or permits.**

(a) If a certificate or permit is required for the interstate movement of regulated articles, the certificates or permit shall be securely attached to the outside of the container in which such articles are moved except that, where the certificate or permit is attached to the waybill or other shipping document, and the regulated articles are adequately described on the certificate, permit or shipping document, the attachment of the certificate or permit to each container of the articles is not required.

(b) In all cases, certificates or permits shall be furnished by the carrier to the consignee at the destination of the shipment.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971]

**§ 301.80-8 Inspection and disposal of regulated articles and pests.**

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and witchweed as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754), in accordance with instructions issued by the Deputy Administrator.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971; 41 FR 27374, July 2, 1976; 66 FR 21052, Apr. 27, 2001]

**§ 301.80-9 Movement of witchweed.**

Regulations requiring a permit for, and otherwise governing the movement of witchweed in interstate or foreign commerce are contained in the Federal plant pest regulations in part 330 of this chapter. Applications for permits for the movement of the pest may be made to the Deputy Administrator.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971]

**§ 301.80-10 Nonliability of the Department.**

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

[35 FR 10553, June 30, 1970, as amended at 36 FR 24917, Dec. 24, 1971]

**Subpart—Imported Fire Ant**

SOURCE: 57 FR 57327, Dec. 4, 1992, unless otherwise noted.

**QUARANTINE AND REGULATIONS**

**§ 301.81 Restrictions on interstate movement of regulated articles.**

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.

**§ 301.81-1 Definitions.**

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture (APHIS).

*Certificate.* A document in which an inspector or a person operating under a compliance agreement affirms that a specified regulated article meets the requirements of this subpart and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles that are moved interstate, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

*Imported fire ant.* Living imported fire ants of the species *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, and hybrids of these species.

*Infestation (infested).* The presence of an imported fire ant queen or a reproducing colony of imported fire ants, except that on grass sod and plants with roots and soil attached, an infestation is the presence of any life form of the imported fire ant.

*Inspector.* An APHIS employee or other person authorized by the Administrator to enforce the provisions of this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for interstate movement only to a specified destination and in accordance with conditions specified on the permit.

*Movement (moved).* The act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing or causing to be moved.

*Noncompacted soil.* Soil that can be removed from an article by brisk brushing or washing with water under normal city water pressure (at least 4 gallons per minute at 40 to 50 pounds per square inch through a 1/2-inch orifice).

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

*Reproducing colony.* A combination of one or more imported fire ant workers and one or more of the following immature imported fire ant forms: Eggs, larvae, or pupae.

*Soil.* Any non-liquid combination of organic and/or inorganic material in which plants can grow.

*Soil-moving equipment.* Equipment used for moving or transporting soil, including, but not limited to, bulldozers, dump trucks, or road scrapers.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

#### § 301.81-2 Regulated articles.

The following are regulated articles:

(a) Imported fire ant queens and reproducing colonies of imported fire ants.<sup>1</sup>

(b) Soil,<sup>2</sup> separately or with other articles, except potting soil that is shipped in original containers in which the soil was placed after commercial preparation.

(c) Baled hay and baled straw stored in direct contact with the ground;

(d) Plants and sod with roots and soil attached, except plants maintained indoors in a home or office environment and not for sale;

(e) Used soil-moving equipment, unless removed of all noncompacted soil; and

(f) Any other article or means of conveyance when:

(1) An inspector determines that it presents a risk of spread of the imported fire ant due to its proximity to an infestation of the imported fire ant; and

(2) The person in possession of the product, article, or means of conveyance has been notified that it is regulated under this subpart.

(Approved by the Office of Management and Budget under control number 0579-0102)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

<sup>1</sup>Permit and other requirements for the interstate movement of imported fire ants are contained in part 330 of this chapter.

<sup>2</sup>The movement of soil from Puerto Rico is subject to additional provisions in part 330 of this chapter.

**§ 301.81-3 Quarantined areas.**

(a) The Administrator will quarantine each State or each portion of a State that is infested.

(b) Less than an entire State will be listed as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81-2 that are equivalent to the interstate movement restrictions imposed by this subpart; and

(2) Designating less than the entire State as a quarantined area will prevent the spread of the imported fire ant.

(c) The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or inseparability from the infested locality for quarantine purposes, as determined by:

(1) Projections of spread of imported fire ant around the periphery of the infestation, as determined by previous years' surveys;

(2) Availability of natural habitats and host materials, within the uninfested acreage, suitable for establishment and survival of imported fire ant populations; and

(3) Necessity of including uninfested acreage within the quarantined area in order to establish readily identifiable boundaries.

(d) The Administrator or an inspector may temporarily designate any nonquarantined area as a quarantined area in accordance with the criteria specified in paragraphs (a), (b), and (c) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonquarantined area, or, in the case of publicly owned land, to the person responsible for the management of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated quarantined areas in paragraph (e) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person re-

sponsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(e) The areas described below are designated as quarantined areas:

**ALABAMA**

The entire State.

**ARKANSAS**

Ashley County. The entire county.

Bradley County. The entire county.

Calhoun County. The entire county.

Chicot County. The entire county.

Clark County. The entire county.

Cleveland County. The entire county.

Columbia County. The entire county.

Dallas County. The entire county.

Desha County. The entire county.

Drew County. The entire county.

Faulkner County. That portion of the county lying south of a line beginning at the intersection of Interstate 40 and the Faulkner/Conway County line; then southeast on Interstate 40 to U.S. Highway 64; then east on U.S. Highway 64 to the Faulkner/White County line.

Garland County. The entire county.

Grant County. The entire county.

Hempstead County. The entire county.

Hot Spring County. The entire county.

Howard County. The entire county.

Jefferson County. The entire county.

Lafayette County. The entire county.

Lincoln County. The entire county.

Little River County. The entire county.

Miller County. The entire county.

Montgomery County. The entire county.

Nevada County. The entire county.

Ouachita County. The entire county.

Perry County. The entire county.

Pike County. The entire county.

Polk County. The entire county.

Pulaski County. The entire county.

Saline County. The entire county.

Sevier County. The entire county.

Union County. The entire county.

**CALIFORNIA**

Los Angeles County. That portion of Los Angeles County in the Cerritos area bounded by a line beginning at the intersection of Artesia Boulevard and Marquardt Avenue; then south along Marquardt Avenue to the Los Angeles/Orange County Line; then south and west along the Los Angeles/Orange County Line to Carson Street; then west along Carson Street to Norwalk Boulevard; then north along Norwalk Boulevard to Centralia Street; then west along Centralia Street to Pioneer Boulevard; then north along Pioneer Boulevard to South Street; then east along South Street to Norwalk Boulevard; then north along Norwalk Boulevard to 183rd Street; then east along 183rd



Street to Bloomfield Avenue; then north along Bloomfield Avenue to Artesia Boulevard; then east along Artesia Boulevard to the point of beginning.

That portion of Los Angeles County in the Azusa area bounded by a line beginning at the intersection of Irwindale Avenue and Foothill Boulevard; then east along Foothill Boulevard to Azusa Avenue; then south along Azusa Avenue to East Fifth Street; then east along East Fifth Street to North Cerritos Avenue; then south along North Cerritos Avenue to Arrow Highway; then west along Arrow Highway to Azusa Avenue; then south along Azusa Avenue to Covina Boulevard; then west along an imaginary line to the intersection of Martinez Street and Irwindale Avenue; then north along Irwindale Avenue to the point of beginning.

Orange County. The entire county.

Riverside County. That portion of Riverside County in the Indio area bounded by a line beginning at the intersection of Avenue 50 and Jackson Street; then south along Jackson Street to 54th Avenue; then west along 54th Avenue to Madison Street; then north along Madison Street to Avenue 50; then east along Avenue 50 to the point of beginning.

That portion of Riverside County in the Moreno Valley area bounded by a line beginning at the intersection of Reche Vista Drive and Canyon Ranch Road; then southeast along Canyon Ranch Road to Valley Ranch Road; then east along Valley Ranch Road to Michael Way; then south along Michael Way to Casey Court; then east along Casey Court to the Moreno Valley City Limits; then south and east along the Moreno Valley City Limits to Pico Vista Way; then southwest along Pico Vista Way to Los Olivos Drive; then south along Los Olivos Drive to Jaclyn Avenue; then west along Jaclyn Avenue to Perris Boulevard; then south along Perris Boulevard to Kalmia Avenue; then west along Kalmia Avenue to Hubbard Street; then north along Hubbard Street to Nightfall Way; then west and south along Nightfall Way to Sundial Way; then west along Sundial Way to Indian Avenue; then south along Indian Avenue to Ebbitide Lane; then west along Ebbitide Lane to Ridgecrest Lane; then south along Ridgecrest Lane to Moonraker Lane; then west along Moonraker Lane to Davis Street; then south along Davis Street to Gregory Lane; then west along Gregory Lane to Heacock Street; then northwest along an imaginary line to the intersection of Lake Valley Drive and Breezy Meadow Drive; then north along Breezy Meadow Drive to its intersection with Stony Creek; then north along an imaginary line to the intersection of Old Lake Drive and Sunnymead Ranch Parkway; then northwest along Sunnymead Ranch Parkway to El Granito Street; then east along El Granito Street to Lawless Road; then east along an

imaginary line to the intersection of Heacock Street and Reche Vista Drive; then north along Reche Vista Drive to the point of beginning.

That portion of Riverside County in the Bermuda Dunes, Palm Desert, and Rancho Mirage areas bounded by a line beginning at the intersection of Ramon Road and Bob Hope Drive; then south along Bob Hope Drive to Dinah Shore Drive; then east along Dinah Shore Drive to Key Largo Avenue; then south along Key Largo Avenue to Gerald Ford Drive; then west along Gerald Ford Drive to Bob Hope Drive; then south along Bob Hope Drive to Frank Sinatra Drive; then east along Frank Sinatra Drive to Vista Del Sol; then south along Vista Del Sol to Country Club Drive; then east along Country Club Drive to Adams Street; then south along Adams Street to 42nd Avenue; then east along 42nd Avenue to Tranquillo Place; then south along Tranquillo Place to its intersection with Harbour Court; then southwest along an imaginary line to the intersection of Granada Drive and Caballeros Drive; then southeast along Caballeros Drive to Kingston Drive; then west along Kingston Drive to Mandeville Road; then east along Mandeville Road to Port Maria Road; then south along Port Maria Road to Fred Waring Drive; then west along Fred Waring Drive to its intersection with Dune Palms Road; then southwest along an imaginary line to the intersection of Adams Street and Miles Avenue; then west along Miles Avenue to Washington Street; then northwest along Washington Street to Fred Waring Drive; then west along Fred Waring Drive to Joshua Road; then north along Joshua Road to Park View Drive; then west along Park View Drive to State Highway 111; then northwest along State Highway 111 to Magnesia Fall Drive; then west along Magnesia Fall Drive to Gardess Road; then northwest along Gardess Road to Dunes View Road; then northeast along Dunes View Road to Halgar Road; then northwest along Halgar Road to Indian Trail Road; then northeast along Indian Trail Road to Mirage Road; then north along Mirage Road to State Highway 111; then northwest along State Highway 111 to Frank Sinatra Drive; then west along Frank Sinatra Drive to Da Vall Drive; then north along Da Vall Drive to Ramon Road; then east along Ramon Road to the point of beginning.

That portion of Riverside County in the Palm Springs area bounded by a line beginning at the intersection of Tramway Road, State Highway 111, and San Rafael Drive; then east along San Rafael Drive to Indian Canyon Drive; then south along Indian Canyon Drive to Francis Drive; then east along Francis Drive to North Farrell Drive; then south along North Farrell Drive to Verona

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Road; then east along Verona Road to Whitewater Club Drive; then east along an imaginary line to the intersection of Verona Road and Ventura Drive; then east along Verona Road to Avenida Maravilla; then east and south along Avenida Maravilla to 30th Avenue; then west along 30th Avenue to its end; then due west along an imaginary line to the Whitewater River; then southeast along the Whitewater River to Dinah Shore Drive; then west along an imaginary line to the east end of 34th Avenue; then west along 34th Avenue to Golf Club Drive; then south along Golf Club Drive to East Palm Canyon Drive; then south along an imaginary line to the intersection of Desterto Vista and Palm Hills Drive; then south along Palm Hills Drive to its end; then southwest along an imaginary line to the intersection of Murray Canyon and Palm Canyon Drive; then northwest along Palm Canyon Drive to the Palm Springs city limits; then west and north along Palm Springs city limits to Tahquitz Creek; then due north along an imaginary line to Tramway Road; then northeast along Tramway Road to the point of beginning.

**FLORIDA**

The entire State.

**GEORGIA**

The entire State.

**LOUISIANA**

The entire State.

**MISSISSIPPI**

The entire State.

**NEW MEXICO**

Dona Ana County. The entire county.

**NORTH CAROLINA**

Anson County. The entire county.

Beaufort County. The entire county.

Bertie County. That portion of the county bounded by a line beginning at the intersection of State Highway 11/42 and the Hertford/Bertie County line; then east along the Hertford/Bertie County line to the Bertie/Chowan County line; then south along the Bertie/Chowan County line to the Bertie/Martin County line; then west along the Bertie/Martin County line to State Highway 11/42; then north along State Highway 11/42 to the point of beginning.

Bladen County. The entire county.

Brunswick County. The entire county.

Cabarrus County. The entire county.

Camden County. That portion of the county bounded by a line beginning at the intersection of State Road 1112 and State Highway 343; then east along State Highway 343 to State Road 1107; then south along State Road 1107 to the Camden/Pasquotank County

line; then north along the Camden/Pasquotank County line to State Road 1112; then north along State Road 1112 to the point of beginning.

Carteret County. The entire county.

Chatham County. The entire county.

Cherokee County. That portion of the county lying south and west of a line beginning at the intersection of the Cherokee/Clay County line and the North Carolina/Georgia State line; then north to U.S. Highway 64; then northwest along the southern shoreline of Hiwassee Lake to the Tennessee State line.

Chowan County. That portion of the county bounded by a line beginning at the intersection of the Chowan/Gates County line and State Highway 32; then south along State Highway 32 to State Highway 37; then east along State Highway 37 to the Chowan/Perquimans County line; then south along the Chowan/Perquimans County line to the shoreline of the Albemarle Sound; then west along the shoreline of the Albemarle Sound to the Chowan/Bertie County line; then north along the Chowan/Bertie County line to the Chowan/Hertford County line; then north along the Chowan/Hertford County line to the Chowan/Gates County line; then east along the Chowan/Gates County line to the point of beginning.

Clay County. That portion of the county lying southwest of State Highway 69 and the North Carolina/Georgia State line; then north along Interstate 70 to its intersection with U.S. Highway 64; then west along U.S. Highway 64 to the Clay/Cherokee County boundary.

Cleveland County. The entire county.

Columbus County. The entire county.

Craven County. The entire county.

Cumberland County. The entire county.

Currituck County. That portion of the county bounded by a line beginning at the intersection of the Currituck/Camden County line and State Road 1112; then east along State Road 1112 to U.S. Highway 158; then south along U.S. Highway 158 to State Road 1111; then east along State Road 1111 to the shoreline of the Atlantic Ocean; then south along the shoreline of the Atlantic Ocean to the Currituck/Duck County line; then south and west along the Currituck/Duck County line to the Currituck/Camden County line; then north along the Currituck/Camden County line to the point of beginning.

Dare County. The entire county, excluding the portion of the barrier islands south of Oregon Inlet.

Duplin County. The entire county.

Durham County. That portion of the county lying south of Interstate 85.

Edgecombe County. That portion of the county lying south of a line beginning at the intersection of State Highway 111 and the Martin/Edgecombe County line; then southwest on State Highway 111 to U.S. Highway

64 Alternate; then west on U.S. Highway 64 Alternate to County Route 1252; then west of this northerly line to County Route 1408; then west on County Route 1408 to County Route 1407; then south on County Route 1407 to the Edgecombe/Nash County line.

Gaston County. The entire county.

Greene County. The entire county.

Harnett County. The entire county.

Hertford County. That portion of the county lying south and east of a line beginning at the intersection of State Highway 11 and the Bertie/Hertford county line; then northeast on State Highway 11 to the U.S. Highway 13 Bypass; then northeast on U.S. Highway 13 to the Hertford/Gates County line.

Hoke County. The entire county.

Hyde County. The entire county.

Johnston County. The entire county.

Jones County. The entire county.

Lee County. The entire county.

Lenoir County. The entire county.

Martin County. That portion of the county lying south of a line beginning at the intersection of State Highway 111 and the Edgecombe/Martin County line; then north and east on State Highway 111 to State Highway 11/42; then northeast along State Highway 11/42 to the Martin/Bertie County line.

Mecklenburg County. The entire county.

Montgomery County. The entire county.

Moore County. The entire county.

Nash County. That portion of the county lying south and east of the line beginning at the intersection of U.S. Highway 64 and the Franklin/Nash County line; then northeast on U.S. Highway 64 to Interstate 95; then north on Interstate 95 to State Highway 4; then east on State Highway 4 to U.S. Highway 301; then east along a straight line from the intersection of State Highway 64 and U.S. Highway 301 to the Nash/Edgecombe County line.

New Hanover County. The entire county.

Onslow County. The entire county.

Orange County. The portion of the county that lies south of Interstate 85.

Pamlico County. The entire county.

Pasquotank County. That portion of the county bounded by a line beginning at the intersection of the Pasquotank/Perquimans County line and U.S. Highway 17; then east along U.S. Highway 17 to the Pasquotank/Camden County line; then south along the Pasquotank/Camden County line to the shoreline of the Albemarle Sound; then west along the shoreline of the Albemarle Sound to the Pasquotank/Perquimans County line; then north along the Pasquotank/Perquimans County line to the point of beginning.

Pender County. The entire county.

Perquimans County. That portion of the county bounded by a line beginning at the intersection of the Perquimans/Chowan County line and State Road 1118; then east along State Road 1118 to State Road 1200;

then north along State Road 1200 to State Road 1213; then east along State Road 1213 to State Road 1214; then southeast along State Road 1214 to State Road 1221; then northeast along State Road 1221 to the Perquimans/Pasquotank County line; then south along the Perquimans/Pasquotank County line to the shoreline of the Albemarle Sound; then west along the shoreline of the Albemarle Sound to the Perquimans/Chowan County line; then north along the Perquimans/Chowan County line to the point of beginning.

Pitt County. The entire county.

Polk County. The entire county.

Randolph County. That portion of the county lying south of the line beginning at the intersection of State Highway 49 and the Davidson/Randolph County line; then east on State Highway 49 to U.S. Highway 64; then east on U.S. Highway 64 to its intersection with the Randolph/Chatham County line.

Richmond County. The entire county.

Robeson County. The entire county.

Sampson County. The entire county.

Scotland County. The entire county.

Stanly County. The entire county.

Tyrrell County. The entire county.

Union County. The entire county.

Wake County. The entire county.

Washington County. The entire county.

Wayne County. The entire county.

Wilson County. The entire county.

#### OKLAHOMA

Bryan County. The entire county.

Carter County. The entire county.

Choctaw County. The entire county.

Comanche County. The entire county.

Johnston County. The entire county.

Love County. The entire county.

Marshall County. The entire county.

McCurtain County. The entire county.

#### PUERTO RICO

The entire State.

#### SOUTH CAROLINA

Abbeville County. The entire county.

Aiken County. The entire county.

Allendale County. The entire county.

Anderson County. The entire county.

Bamberg County. The entire county.

Barnwell County. The entire county.

Beaufort County. The entire county.

Berkeley County. The entire county.

Calhoun County. The entire county.

Charleston County. The entire county.

Cherokee County. That portion of the county bordered by a line beginning at the intersection of the Spartanburg/Cherokee County line and State Secondary Highway 36; then northeast on State Secondary Highway 36 to the South Carolina/North Carolina State line; then east along the State line to the Cherokee/York County line; then south along the Cherokee/York County line to the

Cherokee/Union County line; then northwest on the Cherokee/Union County line to the point of beginning.

Chester County. The entire county.

Chesterfield County. The entire county.

Clarendon County. The entire county.

Colleton County. The entire county.

Darlington County. The entire county.

Dillon County. The entire county.

Dorchester County. The entire county.

Edgefield County. The entire county.

Fairfield County. The entire county.

Florence County. The entire county.

Georgetown County. The entire county.

Greenwood County. The entire county.

Greenville County. That portion of the county bordered by a line beginning at the intersection of the Greenville/Spartanburg County line and State Secondary Highway 277; then northwest on State Secondary Highway 277 to State Secondary Highway 560; then east on State Highway 11 to the unpaved county road—then north on the unpaved county road to secondary system road—unpaved 118; then northeast on secondary system road—unpaved 118 to the South Carolina/North Carolina State line; then west along the South Carolina/North Carolina State line to the Greenville/Pickens County line; then south along the Greenville/Pickens County line to the Greenville/Laurens County line; then northeast along the Greenville/Laurens County line to the point of beginning.

Hampton County. The entire county.

Horry County. The entire county.

Jasper County. The entire county.

Kershaw County. The entire county.

Lancaster County. The entire county.

Laurens County. The entire county.

Lee County. The entire county.

Lexington County. The entire county.

Marion County. The entire county.

Marlboro County. The entire county.

McCormick County. The entire county.

Newberry County. The entire county.

Oconee County. The entire county.

Orangeburg County. The entire county.

Pickens County. The entire county.

Richland County. The entire county.

Saluda County. The entire county.

Spartanburg County. That portion of the county bordered by a line beginning at the intersection of the Spartanburg/Greenville County line and State Secondary Highway 75; then northeast on State Secondary Highway 75 to State Secondary Highway 127 in the town of Gramling; then northeast on State Secondary Highway 127 to State Secondary Highway 37; then north on State Secondary Highway 37 to State Highway 11; then east on State Highway 11 to State Secondary Highway 943; then east on paved county road to State Secondary Highway 42; then southeast on State Secondary Highway 42 to State Secondary Highway 132; then northeast on State Secondary Highway 132 to State Sec-

ondary Highway 58; then south on State Secondary Highway 58 to State Secondary Highway 187; then east on State Highway 11 to the Spartanburg/Cherokee County line; then south along the Spartanburg/Cherokee County line to the Spartanburg/Laurens County line; then north along the Spartanburg/Laurens County line to the point of beginning.

Sumter County. The entire county.

Union County. The entire county.

Williamsburg County. The entire county.

York County. The entire county.

#### TENNESSEE

Anderson County. That portion of the county lying south of a line beginning at the intersection of the Roane/Anderson County line and Tennessee Highway 95; then northeast on Tennessee Highway 95 to Tennessee Highway 62; then southeast on Tennessee Highway 62 to the Anderson/Knox County line.

Bedford County. That portion of the county lying south of a line beginning at the intersection of the Marshall/Bedford County line and Tennessee Highway 270; then southeast on Tennessee Highway 270 to U.S. Highway 41A; then northwest on U.S. Highway 41A to Hickory Hill Road; then east on Hickory Hill Road to Parson Road; then north on Parson Road to Nashville Dirt Road; then northwest on Nashville Dirt Road to Unionville-Deason Road; then east on Unionville-Deason Road to Edd Joyce Road; then east on Edd Joyce Road to Coop Road; then southeast on Coop Road to Tennessee Highway 82; then east on Tennessee Highway 82 to Tennessee Highway 269; then south on Tennessee Highway 269 to Tennessee Highway 64; then northeast on Tennessee Highway 64 to Knob Creek Road; then east on Knob Creek Road to the Bedford/Coffee County line.

Benton County. That portion of the county lying south of a line beginning at the intersection of the Carroll/Benton County line and U.S. Highway 70; then east on U.S. Highway 70 to U.S. Highway 641; then south on U.S. Highway 641 to Shiloh Church Road; then northeast on Shiloh Church Road to Tennessee Highway 191; then northwest on Tennessee Highway 191 to the line of latitude 36° N; then east along the line of latitude 36° N to the Benton/Humphreys County line.

Bledsoe County. That portion of the county lying south of a line beginning at the intersection of the Van Buren/Bledsoe County line and Tennessee Highway 285; then southeast on Tennessee Highway 285 to Bellview Road; then northeast on Bellview Road to Big Spring Gap Road; then southeast on Big Spring Gap Road to Old State Highway 28; then northeast on Old State Highway 28 to the Bledsoe/Cumberland County line.

Blount County. That portion of the county lying south of a line beginning at the intersection of the Knox/Blount County line and U.S. Highway 129; then south on U.S. Highway 129 to U.S. Highway 321; then east on U.S. Highway 321 to the Blount/Sevier County line.

Bradley County. The entire county.

Carroll County. That portion of the county lying southeast of a line beginning at the intersection of the Gibson/Carroll County line and U.S. Highway 79/70A; then northeast on U.S. Highway 79/70A to U.S. Highway 79; then northeast on U.S. Highway 79 to Big Buck Road; then east on Big Buck Road to Tennessee Highway 436; then north on Tennessee Highway 436 to Thompson Road; then east on Thompson Road to Tennessee Highway 22; then southeast on Tennessee Highway 22 to Tennessee Highway 364 (Huntingdon Bypass); then east on Tennessee Highway 364 to U.S. Highway 70, then east on U.S. Highway 70 to the Carroll/Benton County line.

Chester County. The entire county.

Coffee County. That portion of the county lying south of a line beginning at the intersection of the Bedford/Coffee County line and Sixteenth Model Road; then east on Sixteenth Model Road to U.S. Highway 41; then northwest on U.S. Highway 41 to Interstate 24; then southeast on Interstate 24 to Tennessee Highway 55; then northeast on Tennessee Highway 55 to Ragsdale Road; then south on Ragsdale Road to New Bushy Branch Road; then southeast on New Bushy Branch Road to Cornelison Road; then east on Cornelison Road to Clifton Scott Road; then south on Clifton Scott Road to Asbury Road; then east on Asbury Road to Benson Road; then southeast on Benson Road to Buck Jones Road; then south on Buck Jones Road to Old Airport Road; then southwest on Old Airport Road to U.S. Highway 41; then southeast on U.S. Highway 41 to Bailey Road; then east on Bailey Road to Lusk Cove Road; then northeast on Lusk Cove Road to the line of latitude 35°25' N.; then east along the line of latitude 35°25' N. to the Coffee/Grundy County line.

Cumberland County. That portion of the county lying southeast of a line beginning at the intersection of the Rhea/Cumberland County line and Tennessee Highway 68; then northwest on Tennessee Highway 68 to Cox Valley Road; then northeast on Cox Valley Road to U.S. Highway 70; then east on U.S. Highway 70 to Market Street (in Crab Orchard); then north on Market Street to Main Street; then west on Main Street to Chestnut Hill Road; then north on Chestnut Hill Road to the line of latitude 35°56' N.; then east along the line of latitude 35°56' N. to the Cumberland/Morgan County line.

Davidson County. That portion of the county lying southeast of a line beginning at the intersection of the Williamson/Davidson

County line and U.S. Highway 431; then northeast on U.S. Highway 431 to Tennessee Highway 254; then east on Tennessee Highway 254 to U.S. Highway 31A/41A; then north on U.S. Highway 31A/41A to Tennessee Highway 255; then northeast on Tennessee Highway 255 to Interstate 40; then east on Interstate 40 to the Davidson/Wilson County line.

Decatur County. The entire county.

Fayette County. The entire county.

Franklin County. The entire county.

Gibson County. That portion of the county lying southeast of a line beginning at the intersection of the Madison/Gibson County line and U.S. Highway 45W; then northwest on U.S. Highway 45W to U.S. Highway 45 Bypass (Tennessee Highway 366); then north on U.S. Highway 45 Bypass to U.S. Highway 79/70A; then northeast on U.S. Highway 79/70A to the Gibson/Carroll County line.

Giles County. The entire county.

Grundy County. That portion of the county lying southeast of a line beginning at the intersection of the Coffee/Grundy County line and the line of latitude 35°25' N.; then continuing east along the line of latitude 35°25' N. to Deer Run road; then north on Deer Run Road to Cabbage Patch Road; then east on Cabbage Patch Road to Tennessee Highway 108; then southeast on Tennessee Highway 108 to Tennessee Highway 56; then north on Tennessee Highway 56 to the Grundy/Warren County line.

Hamilton County. The entire county.

Hardeman County. The entire county.

Hardin County. The entire county.

Haywood County. That portion of the county lying south of a line beginning at the intersection of the Tipton/Haywood County line and Tennessee Highway 54; then east on Tennessee Highway 54 to U.S. Highway 70; then east on U.S. Highway 70 to Interstate 40; then northeast on Interstate 40 to the Haywood/Madison County line.

Henderson County. The entire county.

Hickman County. That portion of the county lying south of a line beginning at the intersection of the Humphreys/Hickman County line and Interstate 40; then northeast on Interstate 40 to Tennessee Highway 230; then east on Tennessee Highway 230 to Tennessee Highway 48; then southeast on Tennessee Highway 48 to Tennessee Highway 100; then northeast on Tennessee Highway 100 to Tennessee Highway 230; then south on Tennessee Highway 230 to Tennessee Highway 50; then southeast on Tennessee Highway 50 to the Hickman/Maury County Line.

Humphreys County. That portion of the county lying south of a line beginning at the intersection of the Benton/Humphreys County line and the line of latitude 36°; then continuing east along the line of latitude 36° to Forks River Road; then south on Forks River Road to Old Highway 13; then southeast on Old Highway 13 to Tennessee Highway 13; then south on Tennessee Highway 13 to

Interstate 40; then east on Interstate 40 to the Humphreys/Hickman County line.

Knox County. That portion of the county lying south of a line beginning at the intersection of the Anderson/Knox County line and Tennessee Highway 62; then east on Tennessee Highway 62 to Tennessee Highway 131; then south on Tennessee Highway 131 to Middlebrook Pike; then southeast on Middlebrook Pike to North Cedar Bluff Road; then south on North Cedar Bluff Road to U.S. Highway 70; then northeast on U.S. Highway 70 to U.S. Highway 129; then south on U.S. Highway 129 to the Knox/Blount County line.

Lawrence County. The entire county.

Lewis County. The entire county.

Lincoln County. The entire county.

Loudon County. The entire county.

Madison County. The entire county.

Marion County. The entire county.

Marshall County. That portion of the county lying south of a line beginning at the intersection of the Maury/Marshall County line and Moses Road; then northeast on Moses Road to Wilson School Road; then southeast on Wilson School Road to Lunns Store Road; then south on Lunns Store Road to Tennessee Highway 99; then east on Tennessee Highway 99 to U.S. Highway 31A; then south on U.S. Highway 31A to James Shaw Road; then south on James Shaw Road to Clay Hill Road; then east on Clay Hill Road to Warner Road; then south on Warner Road to Batten Road; then southeast on Batten Road to the Marshall/Bedford County line.

Maury County. That portion of the county lying south of a line beginning at the intersection of the Hickman/Maury County line and Jones Valley Road; then east on Jones Valley Road to Leipers Creek Road; then south on Leipers Creek Road to Tennessee Highway 247; then northeast on Tennessee Highway 247 to Tennessee Highway 246; then north on Tennessee Highway 246 to the Maury/Williamson County line.

McMinn County. The entire county.

McNairy County. The entire county.

Meigs County. The entire county.

Monroe County. The entire county.

Moore County. The entire county.

Perry County. The entire county.

Polk County. The entire county.

Rhea County. The entire county.

Roane County. The entire county.

Rutherford County. That portion of the county lying northwest of a line beginning at the intersection of the Williamson/Rutherford County line and Rocky Fork Road; then northeast on Rocky Fork Road to Old Nashville Highway; then southeast on Old Nashville Highway to Tennessee Highway 102; then northeast on Tennessee Highway 102 to Weakley Lane; then north on Weakley Lane to Couchville Pike; then northwest on Couchville Pike to Corinth Road; then north on Corinth Road to the Rutherford/Wilson County line.

Sequatchie County. The entire county.

Shelby County. The entire county.

Tipton County. That portion of the county lying south of a line beginning at the intersection of the Shelby/Tipton County line and Tennessee Highway 14; then northeast on Tennessee Highway 14 to Tennessee Highway 179; then southeast on Tennessee Highway 179 to the Tipton/Haywood County line.

Van Buren County. That portion of the county lying south of Tennessee Highway 30.

Wayne County. The entire county.

Williamson County. That portion of the county lying northeast of a line beginning at the intersection of the Davidson/Williamson County line and U.S. Highway 31; then southwest on U.S. Highway 31 to U.S. Highway Business 431; then southeast on U.S. Highway Business 431 to Mack Hatcher Parkway; then north on Mack Hatcher Parkway to South Royal Oaks Boulevard; then northeast on South Royal Oaks Boulevard to Tennessee Highway 96; then east on Tennessee Highway 96 to Clovercroft Road; then northeast on Clovercroft Road to Wilson Pike; then north on Wilson Pike to Clovercroft Road; then northeast on Clovercroft Road to Rocky Fork Road; then east on Rocky Fork Road to the Williamson/Rutherford County line.

#### TEXAS

Anderson County. The entire county.

Angelina County. The entire county.

Aransas County. The entire county.

Atascosa County. The entire county.

Austin County. The entire county.

Bandera County. The entire county.

Bastrop County. The entire county.

Bee County. The entire county.

Bell County. The entire county.

Bexar County. The entire county.

Blanco County. The entire county.

Bosque County. The entire county.

Bowie County. The entire county.

Brazoria County. The entire county.

Brazos County. The entire county.

Brooks County. The entire county.

Brown County. The entire county.

Burleson County. The entire county.

Burnet County. The entire county.

Caldwell County. The entire county.

Calhoun County. The entire county.

Cameron County. The entire county.

Camp County. The entire county.

Cass County. The entire county.

Chambers County. The entire county.

Cherokee County. The entire county.

Collin County. The entire county.

Colorado County. The entire county.

Comal County. The entire county.

Comanche County. The entire county.

Cooke County. The entire county.

Coryell County. The entire county.

Dallas County. The entire county.

Delta County. The entire county.

Denton County. The entire county.

De Witt County. The entire county.  
 Dimmit County. The entire county.  
 Duval County. The entire county.  
 Eastland County. The entire county.  
 Ector County. The entire county.  
 Edwards County. The entire county.  
 Ellis County. The entire county.  
 Erath County. The entire county.  
 Falls County. The entire county.  
 Fannin County. The entire county.  
 Fayette County. The entire county.  
 Fort Bend County. The entire county.  
 Franklin County. The entire county.  
 Freestone County. The entire county.  
 Frio County. The entire county.  
 Galveston County. The entire county.  
 Gillespie County. The entire county.  
 Goliad County. The entire county.  
 Gonzales County. The entire county.  
 Grayson County. The entire county.  
 Gregg County. The entire county.  
 Grimes County. The entire county.  
 Guadalupe County. The entire county.  
 Hamilton County. The entire county.  
 Hardin County. The entire county.  
 Harris County. The entire county.  
 Harrison County. The entire county.  
 Hays County. The entire county.  
 Henderson County. The entire county.  
 Hidalgo County. The entire county.  
 Hill County. The entire county.  
 Hood County. The entire county.  
 Hopkins County. The entire county.  
 Houston County. The entire county.  
 Hunt County. The entire county.  
 Jack County. The entire county.  
 Jackson County. The entire county.  
 Jasper County. The entire county.  
 Jefferson County. The entire county.  
 Jim Wells County. The entire county.  
 Johnson County. The entire county.  
 Jones County. The entire county.  
 Karnes County. The entire county.  
 Kaufman County. The entire county.  
 Kendall County. The entire county.  
 Kenedy County. The entire county.  
 Kerr County. The entire county.  
 Kimble County. The entire county.  
 Kinney County. The entire county.  
 Kleberg County. The entire county.  
 La Salle County. The entire county.  
 Lamar County. The entire county.  
 Lampasas County. The entire county.  
 Lavaca County. The entire county.  
 Lee County. The entire county.  
 Leon County. The entire county.  
 Liberty County. The entire county.  
 Limestone County. The entire county.  
 Live Oak County. The entire county.  
 Llano County. The entire county.  
 Madison County. The entire county.  
 Marion County. The entire county.  
 Mason County. The entire county.  
 Matagorda County. The entire county.  
 Maverick County. The entire county.  
 McCulloch County. The entire county.  
 McLennan County. The entire county.

McMullen County. The entire county.  
 Medina County. The entire county.  
 Midland County. The entire county.  
 Milam County. The entire county.  
 Montague County. The entire county.  
 Montgomery County. The entire county.  
 Morris County. The entire county.  
 Nacogdoches County. The entire county.  
 Navarro County. The entire county.  
 Newton County. The entire county.  
 Nueces County. The entire county.  
 Orange County. The entire county.  
 Palo Pinto County. The entire county.  
 Panola County. The entire county.  
 Parker County. The entire county.  
 Polk County. The entire county.  
 Rains County. The entire county.  
 Real County. The entire county.  
 Red River County. The entire county.  
 Refugio County. The entire county.  
 Robertson County. The entire county.  
 Rockwall County. The entire county.  
 Rusk County. The entire county.  
 Sabine County. The entire county.  
 San Augustine County. The entire county.  
 San Jacinto County. The entire county.  
 San Patricio County. The entire county.  
 San Saba County. The entire county.  
 Shelby County. The entire county.  
 Smith County. The entire county.  
 Somervell County. The entire county.  
 Stephens County. The entire county.  
 Tarrant County. The entire county.  
 Taylor County. The entire county.  
 Titus County. The entire county.  
 Tom Green County. The entire county.  
 Travis County. The entire county.  
 Trinity County. The entire county.  
 Tyler County. The entire county.  
 Upshur County. The entire county.  
 Uvalde County. The entire county.  
 Val Verde County. The entire county.  
 Van Zandt County. The entire county.  
 Victoria County. The entire county.  
 Walker County. The entire county.  
 Waller County. The entire county.  
 Washington County. The entire county.  
 Webb County. The entire county.  
 Wharton County. The entire county.  
 Wichita County. The entire county.  
 Willacy County. The entire county.  
 Williamson County. The entire county.  
 Wilson County. The entire county.  
 Wise County. The entire county.  
 Wood County. The entire county.  
 Young County. The entire county.

Zavala County. The entire county.

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 3314, Jan. 21, 1994; 59 FR 6531, Feb. 11, 1994; 59 FR 22492, May 2, 1994; 60 FR 52832, Oct. 11, 1995; 61 FR 17551, Apr. 22, 1996; 63 FR 4152, Jan. 28, 1998; 63 FR 36156, July 2, 1998; 64 FR 27658, May 21, 1999; 64 FR 60334, Nov. 5, 1999; 65 FR 30339, May 11, 2000; 65 FR 66489, Nov. 6, 2000; 67 FR 1069, Jan. 9, 2002; 68 FR 5795, Feb. 5, 2003; 69 FR 23416, Apr. 29, 2004; 70 FR 45524, Aug. 8, 2005; 71 FR 42247, July 26, 2006]

**§ 301.81-4 Interstate movement of regulated articles from quarantined areas.**

(a) Any regulated article may be moved interstate from a quarantined area into or through an area that is not quarantined only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.81-5 and 301.81-9 of this subpart;

(2) Without a certificate or limited permit, provided that each of the following conditions is met:

(i) The regulated article was moved into the quarantined area from an area that is not quarantined;

(ii) The point of origin is indicated on a waybill accompanying the regulated article;

(iii) The regulated article is moved through the quarantined area (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs), or has been stored, packed, or parked in locations inaccessible to the imported fire ant, or in locations that have been treated in accordance with the methods and procedures prescribed in the Appendix to this subpart ("III. Regulatory Procedures"), while in or moving through any quarantined area; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity; or

(3) Without a certificate or limited permit provided the regulated article is a soil sample being moved to a laboratory approved by the Administrator<sup>3</sup>

<sup>3</sup>Criteria that laboratories must meet to become approved to process, test, or analyze soil, and the list of currently approved laboratories, may be obtained from the Animal and Plant Health Inspection Service, Plant

to process, test, or analyze soil samples.

(b) Inspectors are authorized to stop any person or means of conveyance moving in interstate commerce they have probable cause to believe is moving regulated articles, and to inspect the articles being moved and the means of conveyance. Articles found to be infested by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial measures, destroyed, or otherwise disposed of. Any treatments will be in accordance with the methods and procedures prescribed in the Appendix to this subpart (III. *Regulatory Procedures*), or in accordance with the methods and procedures prescribed in part 305 of this chapter.

(Approved by the Office of Management and Budget under control number 0579-0102)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994; 59 FR 67609, Dec. 30, 1994; 67 FR 8464, Feb. 25, 2002; 70 FR 33268, June 7, 2005]

**§ 301.81-5 Issuance of a certificate or limited permit.**

(a) An inspector<sup>4</sup> or person operating under a compliance agreement will issue a certificate for the interstate movement of a regulated article approved under such compliance agreement if he or she determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable Federal domestic plant quarantines and regulations;

(2) Is to be moved interstate in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)

Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>4</sup>Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information on local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.



## § 301.81-6

to prevent the spread of the imported fire ant;<sup>5</sup> and

(3)(i) Is free of an imported fire ant infestation, based on his or her visual examination of the article;

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of the imported fire ant; or

(iii) Has been treated in accordance with methods and procedures prescribed in the Appendix to this subpart ("III. Regulatory Procedures").

(b) An inspector will issue a limited permit for the interstate movement of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

(1) Is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the imported fire ant because the imported fire ant will be destroyed by the specified handling, utilization, or processing;

(2) Is to be moved interstate in compliance with any conditions that the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the imported fire ant; and

(3) Is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) An inspector shall issue blank certificates to a person operating under a compliance agreement (in accordance with § 301.81-6 of this subpart) or authorize reproduction of the certificates on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates may then be completed and used, as needed, for the interstate movement of regulated articles that

<sup>5</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

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have met all of the requirements of paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994; 59 FR 67609, Dec. 30, 1994; 66 FR 21052, Apr. 27, 2001]

### § 301.81-6 Compliance agreements.

Persons who grow, handle, or move regulated articles interstate may enter into a compliance agreement<sup>6</sup> if such persons review with an inspector each stipulation of the compliance agreement, have facilities and equipment to carry out disinfection procedures or application of chemical materials in accordance with the "Imported Fire Ant Program Manual," as set forth in the appendix to this subpart, and meet applicable State training and certification standards as authorized by the Federal Insecticide, Fungicide, and Rodenticide Act (86 Stat. 983; 7 U.S.C. 136b). Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67609, Dec. 30, 1994]

### § 301.81-7 Cancellation of a certificate, limited permit, or compliance agreement.

Any certificate, limited permit, or compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately and the cancellation and

<sup>6</sup>Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

the reasons for the cancellation will be confirmed in writing as soon as circumstances allow within 20 days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

(Approved by the Office of Management and Budget under control number 0579-0102)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

**§ 301.81-8 Assembly and inspection of regulated articles.**

(a) Persons requiring certification or other services must request the services from an inspector<sup>7</sup> at least 48 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

**§ 301.81-9 Attachment and disposition of certificates and limited permits.**

(a) The consignor must ensure that the certificate or limited permit authorizing interstate movement of a regulated article is, at all times during interstate movement, attached to:

(1) The outside of the container enclosing the regulated article;

(2) The article itself, if it is not in a container; or

(3) The consignee's copy of the accompanying waybill: *Provided*, that the descriptions of the regulated article on the certificate or limited permit, and

on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing interstate movement of a regulated article to the consignee at the shipper's destination.

(Approved by the Office of Management and Budget under control number 0579-0088)

[57 FR 57327, Dec. 4, 1992, as amended at 59 FR 67133, Dec. 29, 1994]

**§ 301.81-10 Costs and charges.**

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services. The United States Department of Agriculture will not be responsible for any other costs or charges.

APPENDIX TO SUBPART—IMPORTED FIRE ANT

III. Regulatory Procedures

A. *Instructions to Inspectors.* Inspectors must know and follow instructions in the PPQ Treatment Manual, the pesticide label, and exemptions (Section 18 or 24 (c) of FIFRA) for the treatment or other procedures used to authorize the movement of regulated articles. These will serve as a basis for explaining such procedures to persons interested in moving articles affected by the quarantine. Inspectors shall furnish completed information to anyone interested in moving regulated articles.

If there are questions concerning a particular treatment, contact your supervisor.

B. *Authorized Chemicals.* The following chemicals are authorized for the treatment of regulated articles under the IFA quarantine:

INSECTICIDES

Bifenthrin (Talstar®)  
Chlorpyrifos (Dursban®)  
Diazinon  
Fenoxycarb (AWARD®)  
Fipronil (Chipco®)  
Hydramethylnon (AMDRO®)  
Methoprene (Extinguish®)  
Pyriproxyfen (Distance®)  
Tefluthrin (FIREBAN®)

C. *Approved Treatments.*

1. Equipment—Used Soil-Moving

*Methods:* Used soil-moving equipment is eligible for movement when an inspector determines that one of the following procedures has been done:

a. It has been brushed free of noncompacted soil;

<sup>7</sup>See footnote 4 to § 301.81-5(a).

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b. It has been washed free of noncompacted soil; or

c. Noncompacted soil has been removed with air pressure equipment using compressors designed specifically for this purpose. Such compressors must provide free air delivery of no less than 30 cubic feet per minute at 200 pounds per square inch.

**Certification Period:** As long as kept free of noncompacted soil.

**Limitations:** Regardless of the type of cleaning equipment used, all debris and noncompacted soil must be removed unless it is steam-heated by a “steam jenny” to disinfect the articles. Used soil-moving equipment, such as bulldozers, dirt pans, motor graders, and draglines, are difficult to clean sufficiently to eliminate pest risk.

**Precaution:** Steam may remove loose paint and usually is not recommended for use on equipment with conveyor belts and rubber parts.

**2. Hay and Straw**

Baled hay and straw stored in direct contact with the ground is ineligible for movement.

**3. Plants—Balled or in Containers**

a. Emulsifiable chlorpyrifos.

**Material:** Emulsifiable chlorpyrifos—Immersion and drench treatments (post-harvest): any Environmental Protection Agency (EPA) registered formulation is acceptable.

**Dosage:**

Chlorpyrifos formulation	Amount of formulation to make 100 gallons of treating solution
1 EC .....	16 fl. oz. (472 ml).
2 EC .....	8 fl. oz. (236 ml).
4 EC .....	4 fl. oz. (118 ml).

**Exposure Period:** Plants can be certified immediately upon completion of treatment

**Certification Period:** 30 days.

**Precautions:** Dwarf yaupon may show phytotoxicity to chlorpyrifos.

b. Bifenthrin.

(i) Bifenthrin: Drench and Topical Applications.

**Material:** Bifenthrin—drench of containerized nursery stock or topical application to 3- or 4-quart containerized nursery stock followed by irrigation with water.

**Dosage:** Dosage rate is 25 ppm. The amount of formulation needed to achieve 25 ppm varies with the bulk density of the soil or potting media. Follow label directions to calculate the amount of formulation needed to achieve 25 ppm.

**Exposure period:** Containerized nursery stock can be certified immediately upon completion of the treatment.

**Certification period:** 180 days.

(ii) Bifenthrin: Granular Formulation

**Material:** Granular bifenthrin—incorporation into soil or potting media for containerized nursery stock.

**Dosage:** The amount of granular bifenthrin needed to achieve a specified dosage varies with the bulk density of the soil or potting media. Follow label directions to calculate the amount needed to achieve a specified dosage.

Granular Bifenthrin Dosage (parts per million)	Certification Period (months after treatment)
10 ppm .....	0–6 months.
12 ppm .....	0–12 months.
15 ppm .....	0–24 months.
25 ppm .....	Continuous.

**Exposure Period:** Containerized nursery stock can be certified immediately upon completion of the treatment.

c. Tefluthrin: Granular Formulation.

**Material:** Granular tefluthrin—incorporation into soil or potting media for containerized nursery stock.

**Dosage:** The amount of granular tefluthrin needed to achieve a specified dosage varies with the bulk density of the soil or potting media. Follow label directions to calculate the amount of granular tefluthrin needed to achieve a specified dosage.

Granular tefluthrin dosage (parts per million)	Certification period (months after treatment)
10 ppm .....	0–18 months.
25 ppm .....	Continuous.

**Exposure period:** Containerized nursery stock can be certified for interstate movement from quarantined areas immediately upon completion of the treatment.

d. Fipronil: Granular Formulation.

**Material:** Granular fipronil incorporation into soil or potting media for containerized nursery stock.

**Dosage:** The amount of granular fipronil needed to achieve a specified dosage varies with the bulk density of the soil or potting media. Follow label directions to calculate the amount of granular fipronil needed to achieve a specified dosage.

Granular fipronil dosage (parts per million)	Certification period (months after treatment)
10 ppm .....	0–6 months.
12 ppm .....	0–12 months.
15 ppm .....	0–24 months.
25 ppm .....	Continuous.

**Exposure Period:** Containerized nursery stock can be certified for interstate movement from quarantined areas 2 weeks after completion of treatment.

e. General requirements for emulsifiable chlorpyrifos, bifenthrin, tefluthrin, or fipronil.

*Conditions and Type of Soil:* Any friable soil may be treated.

#### Method A—Immersion

##### *Equipment*

1. A watertight container for mixing the treating solutions.
2. Open-top, watertight container sufficiently large to accommodate the treating solution and plants.

*Procedure:* Locate immersion tank in well-ventilated place. Do not remove burlap wrap or plastic containers with drain holes prior to immersion. Immerse soil balls and containers, singly or in groups, so that soil is completely covered by solution. Plants must remain in solution until bubbling ceases. Plant balls should have space between them when grouped in trays, baskets, or other dipping containers. After removal from dip, plants may be set on drainboard until adequately drained.

*Thorough saturation of the plant balls or containers with the insecticide solution is essential.*

As treating progresses, freshly prepared treating mixture should be added to maintain liquid at immersion depth. Dispose of tank contents 8 hours after mixing. Clean tank before recharging. Disposal must comply with State and local regulations.

*Precautions:* Runoff of the solution from the treatment area should not be permitted. Excess solution (and used solution) must be disposed of in accordance with State and local regulations.

#### Method B—Drench

##### *Equipment*

1. A large-capacity bulk mixing tank, either pressurized or gravity-flow for mixing and holding the insecticide solution.
2. Properly equipped hoses and watering nozzles that can be attached to the mixing tank and used to thoroughly saturate the plant balls with the insecticide solution.

##### *Procedure*

1. Plants Balled with Burlap—Apply the chlorpyrifos solution as a substitute for plain water to the plants during the routine watering activities. Do not remove burlap wrap from plants prior to treatment. Treat plants singly or in groups with the chlorpyrifos solution to the point of runoff on a twice daily schedule for 3 consecutive days.

The above treatment should be carried out in a well-ventilated place normally used to maintain plants prior to shipment. The treatment will be enhanced by adding any agricultural wetting agent such as Ortho-77®, Tronic®, Tecowet®, etc., to the chlorpyrifos solution at the labeled rate (usually ½ pint per 100 gallons of water).

2. Containerized Plants—Apply the bifenthrin or chlorpyrifos solution to the point of saturation one time only. The volume of the treating solution must be at least ⅓ (20%) of the volume of the container.

*Precautions:* Thorough saturation of the plant balls or containers with the insecticide solution is essential. Runoff of the solution from the treatment area should not be permitted. Excess solution (and used solution) must be disposed of in accordance with State and local regulations.

#### Method C—Topical Application

Apply bifenthrin according to the label instructions for topical application. The method may be used only with nursery stock in 3- and 4-quart containers. Penetration of the pesticide in larger containers does not provide sufficient residual activity.

Irrigate all treated containers with 1.5 inches of water following application.

*Precautions:* Runoff of the solution from the treatment area should not be permitted. Excess solution (and used solution) must be disposed of in accordance with State and local regulations.

Manufacture of the 10WP (wetable powder) formulation was discontinued in 1998; however, the EPA will allow this product to be utilized until supplies are exhausted.

#### Method D—Granular Incorporation (Bifenthrin)

Apply bifenthrin according to the label instructions for granular incorporation. Mix thoroughly to distribute product evenly throughout the soil or potting media. After potting, containers must be watered to the point of saturation.

*Precautions:* Saturation of the soil or potting media with the granular bifenthrin is essential. Water that drains from the treatment area, which may contain bifenthrin, must be disposed of in accordance with State and local laws.

#### Method E—Granular Incorporation (Tefluthrin)

Apply tefluthrin according to the label directions for granular incorporation. Mix thoroughly to distribute the granular tefluthrin evenly throughout the soil or potting media. After potting, containers must be watered to the point of saturation.

*Precautions:* Saturation of the soil or potting media with the tefluthrin is essential. Water that drains from the treatment area, which may contain tefluthrin, must be disposed of in accordance with State and local laws.

#### Method F—Granular Incorporation (Fipronil)

Apply fipronil according to the label instructions for granular incorporation. Mix thoroughly to distribute product evenly

throughout the soil or potting media. After potting, containers must be watered to the point of saturation.

*Precautions:* Saturation of the soil or potting media with the granular fipronil is essential. Water that drains from the treatment area, which may contain fipronil, must be disposed of in accordance with State and local laws.

#### 4. Imported-Fire-Ant-Free Nursery— Containerized Plants Only

This detection, control, exclusion, and enforcement program is designed to keep nurseries free of the imported fire ant and provides a basis to certify containerized nursery stock for interstate movement.

Participating regulated establishments must be operating under a compliance agreement. Such compliance agreements shall state the specific requirements that a shipper agrees to follow to move plants in accordance with the requirements of the program. Certificates and a nursery identification number may be issued to the nursery for use on shipments of regulated articles.

#### *Detection*

A successful treatment program depends upon early detection of imported fire ant colonies. Nursery owners are required to survey visually their entire premises twice monthly for the presence of imported fire ants.

Nurseries participating in this program will be inspected by Federal or State inspectors at least twice per year. More frequent inspections may be necessary depending upon imported fire ant infestation levels immediately surrounding the nursery, the thoroughness of nursery management in maintaining imported-fire-ant-free premises, and the number of previous detections of imported fire ants in or near containerized plants. Inspections by Federal and State inspectors should be more frequent just before and during the peak shipping season. Any nurseries determined during nursery inspections to have imported fire ant colonies must be immediately treated to the extent necessary to eliminate the colonies.

#### *Control*

Nursery plants that are shipped under this program must originate in a nursery free of imported fire ant. Nursery owners must implement a treatment program with registered bait and contact insecticides. The premises, including growing and holding areas, must be maintained free of the imported fire ant. As part of this treatment program, all exposed soil surfaces (including sod and mulched areas) on property where plants are grown, potted, stored, handled, loaded, unloaded, or sold must be treated with a broadcast application of

hydramethylnon (AMDRO®), fenoxycarb (AWARD®), pyriproxyfen (Distance®), or methoprene (Extinguish®) baits at least once every six months. The first application is more effective when applied early in the spring. An early spring bait application provides control before alate queens are produced or have time to establish new colonies. Follow label directions for use.

When properly used, baits are between 80 percent and 90 percent effective. Follow-up treatments with a contact insecticide must be applied to eliminate all remaining colonies. Mound drench treatments with a registered formulation of chlorpyrifos or diazinon are approved. Follow label directions for use.

#### *Exclusion*

##### *Bifenthrin*

For plants grown on the premises: Treatment of potting media with granular, flowable, or wettable powder formulation of bifenthrin prior to planting is required. This treatment reduces the risk of infestation of containers by alate queens flying in from adjacent or nearby infested premises. The dosage rate for granular bifenthrin is variable and is determined by the certification period selected; for flowable bifenthrin it is 25 ppm; for wettable powder it is 25 ppm.

Apply this treatment according to the label instructions.

Mixing must be adequate to blend the required dosage of pesticide throughout the entire potting soil mixture.

For plants received from outside sources: To prevent the spread into a nursery free of the imported fire ant by newly introduced, infested nursery plants, all plants must be:

- (a) Obtained from nurseries free of imported fire ant that are certified under a compliance agreement; or
- (b) Treated with bifenthrin drench upon delivery in accordance with this appendix (III.C.3.b), and within 180 days be either:
  - (1) Repotted in treated potting soil media,
  - (2) Retreated with bifenthrin drench, immersion, or topical application (III.C.3.b) at 180-day intervals, or
  - (3) Shipped.

##### *Tefluthrin*

For plants grown on the premises: Treatment of soil or potting media with granular, flowable, tefluthrin prior to planting is permitted as an alternative to treatment with granular or wettable powder formulation of bifenthrin. This treatment reduces the risk of infestation of containers by alate queens flying in from adjacent or nearby infested premises. The dosage rate is variable, determined by the selected certification period, for the granular tefluthrin.

Apply this treatment according to the label directions.

Mixing must be adequate to blend the required dosage of granular tefluthrin throughout the entire soil or potting media.

#### *Fipronil*

For plants grown on the premises: Treatment of soil or potting media with granular fipronil prior to planting is permitted as an alternative to treatment with granular formulations of bifenthrin or tefluthrin. This treatment reduces the risk of infestation of containers by alate queens flying in from adjacent or nearby infested premises. The dosage rate is variable, determined by the selected certification period, for the granular fipronil.

Apply this treatment according to the label directions.

Mixing must be adequate to blend the required dosage of granular fipronil throughout the entire soil or potting media.

#### *Enforcement*

The nursery owner shall maintain records of the nursery's surveys and treatments for the imported fire ant. These records shall be made available to State and Federal inspectors upon request.

If imported fire ants are detected in nursery stock during an inspection by a Federal or State inspector, issuance of certificates for movement shall be suspended until necessary treatments are applied and the plants and nursery premises are determined to be free of the imported fire ant. A Federal or State inspector may declare a nursery to be free of the imported fire ant upon reinspection of the premises. This inspection must be conducted no sooner than 30 days after treatment to ensure its effectiveness. During this period, certification may be based upon the drench or immersion treatment provided in paragraph III.C.3. of this appendix, titled "Plants—Balled or in Containers."

Upon notification by the department of agriculture in any State of destination that a confirmed imported fire ant infestation was found on a shipment from a nursery considered free of the imported fire ant, the department of agriculture in the State of origin shall cease its certification of shipments from that nursery. An investigation by Federal or State inspectors will commence immediately to determine the probable source of the problem and to ensure that the problem is resolved. If the problem is an infestation, issuance of certification for movement on the basis of imported-fire-ant-free premises will be suspended until treatment and elimination of the infestation is completed. Reinstatement into the program will be granted upon determination that the nursery premises are free of the imported fire ant, and that all other provisions of this subpart are being followed.

In cases where the issuance of certificates is suspended through oral notification, the suspension and the reasons for the suspen-

sion will be confirmed in writing within 20 days of the oral notification of the suspension. Any person whose issuance of certificates has been suspended may appeal the decision, in writing, within 10 days after receiving the written suspension notice. The appeal must state all of the facts and reasons that the person wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

Violations of the quarantine shall be investigated by Federal or State inspectors and appropriate penalties will be assessed to discourage further violations.

This imported-fire-ant-free nursery program is not mandatory for movement of regulated articles. Plants, balled or in containers, may otherwise be certified for movement using the chlorpyrifos, bifenthrin, tefluthrin, or fipronil treatments described in paragraph III.C.3 of this appendix, titled "Plants, Balled or in Containers." However, certification for movement under the imported-fire-ant-free nursery program will be granted only if all of the provisions of this subpart are followed.

*Certification Period:* Continuous as long as all provisions of the imported-fire-ant-free nursery program are followed.

#### 5. Field-Grown Woody Ornamentals (In-Field Treatment Prior to Harvest)

*Material:* Chlorpyrifos used in combination with fenoxycarb (AWARD®), hydramethylnon (AMDRO®), pyriproxyfen (Distance®), or methoprene (Extinguish®) fire ant bait.

*Dosage:* Fenoxycarb (AWARD®), hydramethylnon (AMDRO®), pyriproxyfen (Distance®), or methoprene (Extinguish®) at 1.0–1.5 lb (0.45–0.68 kg) bait/acre. Chlorpyrifos at 6.0 lb (2.7 kg) a.i./acre.

*Method:* Apply fenoxycarb (AWARD®), hydramethylnon (AMDRO®), pyriproxyfen (Distance®), or methoprene (Extinguish®) only when ants are actively foraging (follow EPA-approved label directions for use). Broadcast application with any type of equipment that can be calibrated to deliver 1.0–1.5 lb (0.45–0.68 kg) of bait per acre. Three to five days after the fenoxycarb (AWARD®), hydramethylnon (AMDRO®), or pyriproxyfen (Distance®) application, apply chlorpyrifos broadcast at 6.0 lb (2.7 kg) a.i. per acre. Treatment area must extend at least 10 feet beyond the base of all plants that are to be certified.

*Exposure Period:* 30 days. Plants can be certified 30 days after treatment.

*Certification Period:* 12 weeks.

*Special Information:* This in-field treatment is based on a sequential application of

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fenoxycarb (AWARD®), hydramethylnon (AMDRO®), pyriproxyfen (Distance®), or methoprene (Extinguish®) followed by chlorpyrifos. The combination treatment is necessary since broadcast application of chlorpyrifos (or other short-term residual insecticides) usually does not eliminate large, mature IFA colonies, and no bait, including fenoxycarb (AWARD®) hydramethylnon (AMDRO®), pyriproxyfen (Distance®), or methoprene (Extinguish®), is capable of providing a residual barrier against reinfestation by new queens. Therefore, the fenoxycarb (AWARD®) hydramethylnon (AMDRO®), pyriproxyfen (Distance®), or methoprene (Extinguish®) application will drastically reduce the IFA population while chlorpyrifos, applied approximately 5 days later, will destroy any remaining weakened colonies and also leave a residual barrier against reinfestation by new queens for at least 12 weeks.

**6. Blueberries and Other Fruit and Nut Nursery Stocks**

Certain States have special local need labeling in accordance with section 24(c) of FIFRA for D-z-n® Diazinon AG-500 and D-z-n® Diazinon 50W, which APHIS will recognize as a regulatory treatment for containerized nonbearing blueberries and fruit and nut plants. Follow label directions for use.

**7. Plants—Greenhouse Grown**

Greenhouse grown plants are certifiable without treatment if the inspector determines that the greenhouse is constructed of fiberglass, glass, or plastic in such a way that IFA is physically excluded and cannot become established within the enclosure. No other treatment of the plants will be necessary if they are not exposed to infestation.

**8. Grass—Sod**

*Material*

**a. Chlorpyrifos.**

Material	Amount and dosage of material	Certification period
Chlorpyrifos .....	8.0 lb (3.6 kg) a.i./acre .....	6 weeks (after exposure period has been completed).

*Exposure Period:* 48 hours.

*Method*

1. Apply a single broadcast application of chlorpyrifos with ground equipment.

2. Immediately after treatment, water the treated areas with at least ½ inch of water.

Chlorpyrifos wettable powder Dursban® 50-WP: Follow label directions for regulatory treatment for IFA.

**b. Fipronil.**

Material	Amount and dosage of material	Certification period
Fipronil .....	Dosage per application: 0.0125 lb (0.00567 kg) a.i./acre. Total amount over two applications: 0.025 lb (0.01134 kg) a.i./acre.	20 weeks (after exposure period has been completed).

*Exposure Period:* 30 days from the second application.

*Method*

1. Apply in two applications approximately 1 week apart for a total of 0.025 lb (0.01134 kg) a.i./acre.

2. Follow label directions for regulatory treatment for IFA.

**9. Soil—Bulk**

*Method:* Bulk soil is eligible for movement when heated either by dry or steam heat after all parts of the mass have been brought to the required temperature.

*Temperature:* 150 °F (65.5 °C).

*Certification Period:* As long as protected from recontamination.

**10. Soil Samples**

Soil samples are eligible for movement when heated or frozen as follows:

**Heat**

*Method:* Soil samples are heated either by dry heat or steam heat. All parts of the mass must be brought to the required temperature.

*Temperature:* 150 °F (65.5 °C).

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*Certification Period:* As long as protected from recontamination.

### Cold

*Method:* Soil samples are frozen in any commercial cold storage, frozen food locker, or home freezer capable of rapidly reducing to and maintaining required temperature. Soil samples will be placed in containers, such as plastic bags—one sample per bag. The containers will be arranged in the freezer in a manner to allow the soil samples to freeze in the fastest possible time. If desired, the frozen samples may be shipped in one carton.

*Temperature:*  $-10^{\circ}$  to  $-20^{\circ}$  °F ( $-23^{\circ}$  to  $-29^{\circ}$  °C) for at least 24 hours.

*Certification Period:* As long as protected from recontamination.

D. *Mitigative Measures.* The following measures are required to minimize impact on the environment and human health. Any person requesting certification to authorize the movement of regulated articles must adhere to these measures where applicable.

1. All applicable Federal, State, and local environmental laws and regulations must be followed.

2. Safety equipment and clothing, as specified by the label instructions, must be used and worn during treatments and during inspections.

3. Safety practices shall be communicated, and regulated establishment managers must require that on-the-job safety practices be followed.

4. All pesticides must be applied, handled, stored, and used in accordance with label instructions.

5. Empty pesticide containers must be disposed of in accordance with Federal and State regulations.

6. Pesticide remaining in containers after completion of an application must be retained and disposed of in accordance with label instructions and Federal and State regulations.

7. Oral or written warning must be provided to workers and the general public, indicating pesticide application areas during application and appropriate reentry periods.

8. Owners/managers of regulated properties must take precautions to limit access by the public, livestock, and wildlife to treated areas.

9. Accidental spill or water runoff of liquid or granular pesticides leading to potential contamination of ground and surface waters must be minimized by appropriate operating procedures. Catchment facilities (temporary or permanent) adequate to prevent contamination of ground and surface water are necessary in loading areas where liquid drenches and immersions are applied.

10. An environmental monitoring plan, including monitoring procedures, must be implemented by APHIS. Monitoring must be

conducted to determine if additional mitigative measures are necessary.

[57 FR 57327, Dec. 4, 1992, as amended at 58 FR 57954, Oct. 28, 1993; 59 FR 48779, Sept. 23, 1994; 59 FR 67609, Dec. 30, 1994; 62 FR 30740, June 5, 1997; 64 FR 27659, May 21, 1999; 64 FR 57970, Oct. 28, 1999; 64 FR 60334, Nov. 5, 1999; 65 FR 30341, May 11, 2000; 67 FR 58685, Sept. 18, 2002; 68 FR 59308, Oct. 15, 2003]

### Subpart—Unshu Oranges [Reserved]

### Subpart—Golden Nematode

SOURCE: 37 FR 24330, Nov. 16, 1972, unless otherwise noted.

#### QUARANTINE AND REGULATIONS

#### **§ 301.85 Quarantine; restriction on interstate movement of specified regulated articles.**

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754), the Secretary of Agriculture quarantines the State of New York in order to prevent the spread of the golden nematode (*Globodera rostochiensis*), which causes a dangerous disease of potatoes and certain other plants and is not widely prevalent or distributed within and throughout the United States. Through the aforementioned authorities, the Secretary imposes a quarantine on the State of New York with respect to the interstate movement from that State of the articles described in paragraph (b) of this section, issues regulations in this subpart governing the movement of such articles, and gives notice of this quarantine action.

(b) *Quarantine restrictions on interstate movement of specified regulated articles.* No common carrier or other person shall move interstate from any quarantined State any of the following articles (defined in § 301.85-1 as regulated articles), except in accordance with the conditions prescribed in this subpart:

(1) Soil, compost, humus, muck, peat, and decomposed manure, separately or with other things.

(2) Plants with roots, except soil-free aquatic plants.

(3) Grass sod.



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(4) Plant crowns and roots for propagation.

(5) True bulbs, corms, rhizomes, and tubers of ornamental plants.

(6) Irish potatoes included within any one or more of the following paragraph (b)(6)(i), (ii), or (iii) of this section:

(i) Irish potatoes for seed; and

(ii) Irish potatoes unless—

(A) Each is at least 1½ inches in diameter based on measurement by a sizing screen or sizing chain, each is substantially free of soil as a result of grading (a method of removing soil mechanically) under a compliance agreement in accordance with § 301.85–5(b), and they are moved in an approved container; or

(B) Each is substantially free of soil as a result of washing or fluming under a compliance agreement in accordance with § 301.85–5(b), and they are moved in an approved container; or

(iii) Irish potatoes harvested from a field tested and found by an inspector to contain an identifiable population of viable golden nematodes, unless such field had been subsequently treated in accordance with paragraph (b)(6)(iii)(A), (B), or (C) of this section under the supervision of an inspector and in accordance with any additional conditions found necessary by the inspector to assure effective application of the pesticide used; and unless headlands and farm roads are treated in accordance with paragraph (b)(6)(iii)(D) of this section:

(A) Applications of 140.3 liters of Vorlex (1,3 dichloropropene; 1,2 dichloropropane, and other related compounds, 80 percent; plus methyl isothiocyanate, 20 percent active ingredients) per hectare (15 gallons per acre); two applications 5 to 10 days apart with a third application 5 to 10 days after the second application to areas in which the inspector finds upon microscopic examination of soil samples that viable golden nematodes may still exist; soil to be from 3 °C to 29 °C (38 °F to 84 °F).

(B) Applications of 280.6 liters of D-D (1,3 dichloropropene; 1,2 dichloropropane, and other related compounds, 100 percent active ingredients) per hectare (30 gallons per acre); two applications 5 to 10 days apart with a third application 5 to 10 days after

the second application to areas in which the inspector finds upon microscopic examination of soil samples that viable golden nematodes may still exist (consult product label for heavier dosage in muck or peat soils); soil to be from 4.5 °C to 29 °C (40 °F to 84 °F).

(C) Applications of 168.4 liters of Telone II (1,3 dichloropropene, 92 percent active ingredient) per hectare (18 gallons per acre); two applications 5 to 10 days apart with a third application 5 to 10 days after the second application to areas in which the inspector finds upon microscopic examination of soil samples that viable golden nematodes may still exist (consult product label for heavier dosage in muck or peat soils); soil to be from 4.5 °C to 32 °C (40 °F to 90 °F).

(D) Application of Vapam (sodium-N-methyl dithiocarbamate, 32.7 percent active ingredient) mixed with water at the rate of 1 part Vapam to 60 parts water and applied as a drench at the rate of 14.96 cubic meters per hectare (1600 gallons per acre); soil to be from 4.5 °C to 32 °C (40 °F to 90 °F).

(7) Root crops other than Irish potatoes.

(8) Small grains and soybeans.

(9) Hay, straw, fodder, and plant litter, of any kind.

(10) Ear corn, except shucked ear corn.

(11) Used crates, boxes, and burlap bags, and other used farm products containers.

(12) Used farm tools.

(13) Used mechanized cultivating equipment and used harvesting equipment.

(14) Used mechanized soil-moving equipment.

(15) Any other products, articles, or means of conveyance of any character whatsoever, not covered by paragraphs (b) (1) through (14) of this section, when it is determined by an inspector that they present a hazard of spread of golden nematode, and the person in possession thereof has been so notified.

[37 FR 24330, Nov. 16, 1972, as amended at 47 FR 12331, Mar. 23, 1982; 66 FR 21052, Apr. 27, 2001; 67 FR 8465, Feb. 25, 2002; 69 FR 21040, Apr. 20, 2004]

**§ 301.85-1 Definitions.**

Terms used in the singular form in this subpart shall be deemed to import the plural and vice versa, as the case may demand. The following terms, when used in this subpart shall be construed respectively to mean:

*Certificate.* A document issued or authorized to be issued under this subpart by an inspector to allow the interstate movement of regulated articles to any destination.

*Compliance agreement.* A written agreement between a person engaged in growing, handling, or moving regulated articles, and the Plant Protection and Quarantine Programs, wherein the former agrees to comply with the requirements of this subpart identified in the agreement by the inspector who executes the agreement on behalf of the Plant Protection and Quarantine Programs as applicable to the operations of such person.

*Deputy Administrator.* The Deputy Administrator of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of said service to whom authority to act in his stead has been or may hereafter be delegated.

*Farm tools.* An instrument worked or used by hand, e.g., hoes, rakes, shovels, axes, hammers, and saws.

*Generally infested area.* Any part of a regulated area not designated as a suppressive area in accordance with § 301.85-2.

*Golden nematode.* The nematode known as the golden nematode (*Globodera rostochiensis*), in any stage of development.

*Infestation.* The presence of the golden nematode or the existence of circumstances that make it reasonable to believe that the golden nematode is present.

*Inspector.* Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator to enforce the provisions of the Quarantine and regulations in this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document issued or authorized to be issued by an inspector to allow the interstate movement of noncertifiable regulated articles to a specified destination for limited handling, utilization or processing or for treatment.

*Mechanized cultivating equipment; and mechanized harvesting equipment.* Mechanized equipment used for soil tillage, including tillage attachments for farm tractors, e.g., tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes, e.g., combines, potato conveyors, and harvesters and hay balers.

*Mechanized soil-moving equipment.* Equipment used for moving or transporting soil, e.g., draglines, bulldozers, dump trucks, road scrapers, etc.

*Moved (movement, move).* Shipped, deposited for transmission in the mail, otherwise offered for shipment, received for transportation, carried, or otherwise transported, or moved, or allowed to be moved, by mail or otherwise. "Movement" and "move" shall be construed in accordance with this definition.

*Person.* Any individual, corporation, company, society, or association, or other organized group of any of the foregoing.

*Plant Protection and Quarantine Programs.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

*Regulated area.* Any quarantined State, or any portion thereof, listed as a regulated area in § 301-85-2a, or otherwise designated as a regulated area in accordance with § 301.85-2(b).

*Regulated article.* Any articles as described in § 301.85(b).

*Restricted destination permit.* A document issued or authorized to be issued by an inspector to allow the interstate movement of regulated articles not certifiable under all applicable Federal domestic plant quarantines to a specified destination for other than scientific purposes.

*Scientific permit.* A document issued by the Deputy Administrator to allow

the interstate movement to a specified destination of regulated articles for scientific purposes.

*Soil.* That part of the upper layer of earth in which plants can grow.

*State.* Any State, territory, or district of the United States, including Puerto Rico.

*Suppressive area.* That portion of a regulated area where eradication of infestation is undertaken as an objective, as designated under § 301.85-2(a).

[37 FR 24330, Nov. 16, 1972, as amended at 47 FR 12331, Mar. 23, 1982; 66 FR 21052, Apr. 27, 2001; 67 FR 8465, Feb. 25, 2002; 70 FR 33268, June 7, 2005]

**§ 301.85-2 Authorization to designate, and terminate designation of, regulated areas and suppressive or generally infested areas; and to exempt articles from certification, permit, or other requirements.**

(a) *Regulated areas and suppressive or generally infested areas.* The Deputy Administrator shall list as regulated areas, in a supplemental regulation designated as § 301.85-2a, each quarantined State; or each portion thereof in which golden nematode has been found or in which there is reason to believe that golden nematode is present, or which it is deemed necessary to regulate because of their proximity to infestation or their inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator, in the supplemental regulation, may divide any regulated area into a suppressive area or a generally infested area in accordance with the definitions thereof in § 301.85-1. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the interstate spread of the golden nematode.

(b) *Temporary designation of regulated areas and suppressive or generally infested areas.* The Deputy Administrator or an authorized inspector may temporarily designate any other premises in a quarantined State as a regulated area and a suppressive or generally infested area, in accordance with the criteria specified in paragraph (a) of this section for listing such area, by serving written notice thereof on the owner or person in possession of such premises, and thereafter the interstate movement of regulated articles from such premises by any person having notice of the designation shall be subject to the applicable provisions of this subpart. As soon as practicable, such premises shall be added to the list in § 301.85-2a if a basis then exists for their designation; otherwise the designation shall be terminated by the Deputy Administrator or an authorized inspector and notice thereof shall be given to the owner or person in possession of the premises.

(c) *Termination of designation as a regulated area and a suppressive or generally infested area.* The Deputy Administrator shall terminate the designation provided for under paragraph (a) of this section of any area listed as a regulated area and suppressive or generally infested area when he determines that such designation is no longer required under the criteria specified in paragraph (a) of this section.

(d) *Exemption of articles from certification, permit, or other requirements.* The Deputy Administrator may, in a supplemental regulation designated as § 301.85-2b, list regulated articles or movements of regulated articles which shall be exempt from the certification, permit, or other requirements of this subpart under such conditions as he or she may prescribe, if he or she finds that facts exist as to the pest risk involved in the movement of such regulated articles which make it safe to so relieve such requirements.

[37 FR 24330, Nov. 16, 1972, as amended at 70 FR 33268, June 7, 2005]

**§ 301.85-2a Regulated areas; suppressive and generally infested areas.**

The civil divisions and parts of civil divisions described below are designated as golden nematode regulated

areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

NEW YORK

(1) *Generally infested area:*

*Cayuga County.* (A) The Town of Montezuma;

(B) That portion of land within the Town of Mentz owned or operated by Martens Farm which lies in an area bounded as follows: Beginning at the intersection of Tow Path Road and Maiden Lane; then west along Tow Path Road to its intersection with the Town of Mentz boundary; then north along the Town of Mentz boundary to its intersection with Maiden Lane; then east along Maiden Lane to the point of beginning.

*Genesee County.* The towns of Elba and Byron.

*Livingston County.* The towns of Avon, Caledonia, Geneseo, Groveland, Leicester, Lima, Livonia, Mount Morris, West Sparta, and York.

*Nassau County.* The entire county.

*Orleans County.* The towns of Barre and Clarendon.

*Seneca County.* The town of Tyre.

*Steuben County.* (A) The towns of Prattsburg and Wheeler;

(B) That area known as "Arkport Muck" located in the town of Dansville and bounded by a line beginning at a point where the Conrail right-of-way (Erie Lackawanna Railroad) intersects County Road 52 (known as Burns Road), then north and northeast along County Road 52 to its junction with New York Route 36, then south and southeast along New York Route 36 to its intersection with the Dansville Town line, then west along the Dansville Town line to its intersection with the Conrail right-of-way (Erie Lackawanna Railroad), then north and northwest along the Conrail right-of-way to the point of beginning;

(C) The Werth, Dale farm, known as the "Werthwhile Farm," located in the town of Cohocton on the north side of County Road 5 (known as Brown Hill Road), and 0.2 mile west of the junction of County Road 5 with County Road 58 (known as Wager Road); and

(D) The property located in the town of Fremont that is bounded as follows: Beginning at a point on Babcock Road that intersects a farm road marked by latitude/longitude coordinates 42°26'12.5", -77°34'30.4"; then west along the farm road to coordinates 42°26'12.2", -77°34'41.0"; then south to coordinates 42°26'09.6", -77°34'40.9"; then west to coordinates 42°26'09.4", -77°34'50.7"; then south to coordinates 42°26'00.7", -77°34'50.3"; then east to coordinates 42°25'59.9", -77°34'40.4"; then south to coordinates 42°25'54.7", -77°34'40.0"; then east to coordinates

42°25'56.3", -77°34'37.7"; then north to coordinates 42°25'58.9", -77°34'35.0"; then east to coordinates 42°25'58.9", -77°34'34.1"; then north to coordinates 42°26'05.8", -77°34'32.5"; then east to coordinates 42°26'05.7", -77°34'29.9"; then north to the point of beginning at coordinates 42°26'12.5", -77°34'30.4".

*Suffolk County.* The entire county.

*Wayne County.* The town of Savannah.

(2) *Suppressive area:* None.

[51 FR 30050, Aug. 22, 1986, as amended at 69 FR 249, Jan. 5, 2004; 69 FR 64640, Nov. 8, 2004]

**§ 301.85-2b Exempted articles.<sup>1</sup>**

(a) The following articles are exempt from the certification and permit requirements of this subpart if they meet the applicable conditions prescribed in paragraphs (a) (1) through (4) of this section and have not been exposed to infestation after cleaning or other handling as prescribed in said paragraphs:

(1) Small grains, if harvested in bulk or directly into approved containers, and if the small grains and containers thereof have not come into contact with the soil; or, if they have been cleaned to meet State seed sales requirements.

(2) Soybeans (other than for seed), if harvested in bulk or directly into approved containers, and if the soybeans and containers thereof have not come into contact with the soil.

(3) Unshucked ear corn, if harvested in bulk or directly into approved containers, and if the corn and containers thereof have not come into contact with the soil.

(4) Used farm tools, if cleaned free of soil.

(b) The following articles are exempt from the certification and permit requirements of this subpart if they meet the applicable conditions prescribed in paragraphs (b) (1) through (3) of this section and have not been exposed to infestation after cleaning or other handling as prescribed in said paragraphs: *Provided*, That this exemption shall not apply to any class of regulated articles specified by an inspector in a written notification to the owner or person in possession of the premises that the movement of such articles from such

<sup>1</sup>The articles hereby exempted remain subject to applicable restrictions under other quarantines and other provisions of this subpart.

premises under this exemption would involve a hazard of spread of the golden nematode:

(1) Root crops (other than Irish potatoes and sugar beets), if moved in approved containers.

(2) Hay, straw, fodder, and plant litter, if moved in approved containers.

(c) Containers of the following types are approved for the purposes of this section:

(1) New paper bags; and consumer packages of any material except cloth or burlap.

(2) Crates, pallet boxes, trucks, and boxcars, if free of soil.

[35 FR 4692, Mar. 18, 1970, as amended at 47 FR 12331, Mar. 23, 1982; 67 FR 8465, Feb. 25, 2002]

**§ 301.85-3 Conditions governing the interstate movement of regulated articles from quarantined States.<sup>2</sup>**

(a) Any regulated articles except soil samples for processing, testing, or analysis may be moved interstate from any quarantined State under the following conditions:

(1) With certificate or permit issued and attached in accordance with §§ 301.85-4 and 301.85-7 if moved:

(i) From any generally infested area or any suppressive area into or through any point outside of the regulated areas; or

(ii) From any generally infested area into or through any suppressive area; or

(iii) Between any noncontiguous suppressive areas; or

(iv) Between contiguous suppressive areas when it is determined by an inspector that the regulated articles present a hazard of the spread of the golden nematode and the person in possession thereof has been so notified; or

(v) Through or reshipped from any regulated area when such movement is not authorized under paragraph (a)(2)(v) of this section; or

(2) From any regulated area, without certificate or permit if moved:

(i) Under the provisions of § 301.85-2b which exempts certain articles from certificate and permit requirements; or

(ii) From a generally infested area to a contiguous generally infested area; or

(iii) From a suppressive area to a contiguous generally infested area; or

(iv) Between contiguous suppressive areas unless the person in possession of the articles has been notified by an inspector that a hazard of spread of the golden nematode exists; or

(v) Through or reshipped from any regulated area if the articles originated outside of any regulated area and if the point of origin of the articles is clearly indicated, their identity has been maintained, and they have been safeguarded against infestation while in the regulated area in a manner satisfactory to the inspector; or

(3) From any area outside the regulated areas, if moved:

(i) With a certificate or permit attached; or

(ii) Without a certificate or permit, if:

(a) The regulated articles are exempt from certification and permit requirements under the provisions of § 301.85-2b; or

(b) The point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

(b) Unless specifically authorized by the Deputy Administrator in emergency situations, soil samples for processing, testing or analysis may be moved interstate from any regulated area only to laboratories approved<sup>3</sup> by the Deputy Administrator and so listed by him in a supplemental regulation.<sup>4</sup> A certificate or permit is not required to be attached to such soil samples except in those situations where the Deputy Administrator has authorized such movement only with a certificate or permit issued and attached in accordance with §§ 301.85-4 and 301.85-7. A certificate or permit is not required to be attached to soil samples originating in

<sup>2</sup>Requirements under all other applicable Federal domestic plant quarantines must also be met.

<sup>3</sup>Pamphlets containing provisions for laboratory approval may be obtained from the Deputy Administrator, Plant Protection and Quarantine Programs, APHIS, U.S. Department of Agriculture, Washington, DC 20250.

<sup>4</sup>For list of approved laboratories, see PP 639 (37 FR 7813, 15525, and amendments thereof).

areas outside of the regulated areas if the point of origin of such movement is clearly indicated on the articles or shipping document which accompanies the articles and if the movement is not made through any regulated area.

[37 FR 24330, Nov. 16, 1972, as amended at 67 FR 8465, Feb. 25, 2002]

**§ 301.85-4 Issuance and cancellation of certificates and permits.**

(a) Certificates may be issued for any regulated articles (except soil samples for processing, testing, or analysis) by an inspector if the inspector determines that they are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles and:

(1) Have originated in noninfested premises in a regulated area and have not been exposed to infestation while within the regulated areas; or

(2) Have been treated to destroy infestation in accordance with part 305 of this chapter; or

(3) Have been grown, produced, manufactured, stored, or handled in such a manner that no infestation would be transmitted thereby.

(b) Limited permits may be issued by an inspector to allow interstate movement of regulated articles (except soil samples for processing, testing or analysis) not eligible for certification under this subpart, to specified destinations for limited handling, utilization, or processing, or for treatment in accordance with part 305 of this chapter, when, upon evaluation of the circumstances involved in each specific case he determines that such movement will not result in the spread of the golden nematode and requirements of other applicable Federal domestic plant quarantines have been met.

(c) Restricted destination permits may be issued by an inspector to allow the interstate movement (for other than scientific purposes) of regulated articles (except soil samples for processing, testing, or analysis) to any destination permitted under all applicable Federal domestic plant quarantines if such articles are not eligible for certification under all such quarantines but would otherwise qualify for certification under this subpart.

(d) Scientific permits to allow the interstate movement of regulated articles and certificates or permits to allow the movement of soil samples for processing, testing, or analysis in emergency situations may be issued by the Deputy Administrator under such conditions as may be prescribed in each specific case by the Deputy Administrator to prevent the spread of the golden nematode.

(e) Certificate, limited permit, and restricted destination permit forms may be issued by an inspector to any person for use for subsequent shipments of regulated articles (except for soil samples for processing, testing, or analysis) provided such person is operating under a compliance agreement; and any such person may be authorized by an inspector to reproduce such forms on shipping containers or otherwise. Any such person may execute and issue the certificate forms, or reproductions of such forms, for the interstate movement of regulated articles from the premises of such person identified in the compliance agreement if such person has treated such regulated articles to destroy infestation in accordance with part 305 of this chapter, and if such regulated articles are eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such articles. Any such person may execute and issue the limited permit forms, or reproductions of such forms, for interstate movement of regulated articles to specified destinations when the inspector has made the determinations specified in paragraph (b) of this section. Any such person may execute and issue the restricted destination permit forms, or reproductions of such forms, for the interstate movement of regulated articles not eligible for certification under all Federal domestic plant quarantines applicable to such articles, under the conditions specified in paragraph (c) of this section.

(f) Any certificate or permit which has been issued or authorized may be withdrawn by the inspector or the Deputy Administrator if he or she determines that the holder thereof has not complied with any condition for the use of such document imposed by this subpart. Prior to such withdrawal, the

#### **§ 301.85-5**

holder of the certificate of permit shall be notified of the proposed action and the reason therefor and afforded reasonable opportunity to present his or her views thereon.

[37 FR 24330, Nov. 16, 1972, as amended at 70 FR 33268, June 7, 2005]

#### **§ 301.85-5 Compliance agreement and cancellation thereof.**

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. Compliance agreement forms may be obtained from the Deputy Administrator or an inspector.

(b) Any person engaged in the business of removing soil from Irish potatoes by the process of grading, washing, or fluming may enter into a compliance agreement concerning such operations. The compliance agreement shall be a written agreement between the person conducting such operations and Plant Protection and Quarantine wherein such person agrees to conduct such operations in a manner which, in the judgment of the inspector supervising enforcement of the quarantine and regulations, will substantially remove the soil from the potatoes.

(c) Any compliance agreement may be canceled by the inspector who is supervising its enforcement whenever the inspector finds, after notice and reasonable opportunity to present views has been accorded to the other party thereto, that such other party has failed to comply with the conditions of the agreement.

[37 FR 24330, Nov. 16, 1972, as amended at 47 FR 12332, Mar. 23, 1982; 70 FR 33268, June 7, 2005]

#### **§ 301.85-6 Assembly and inspection of regulated articles.**

Persons (other than those authorized to use certificates, limited permits, or restricted destination permits, or reproductions thereof, under § 301.85-4(e)) who desire to move interstate regulated articles which must be accompanied by a certificate or permit shall, as far in advance as possible, request an inspector to examine the articles prior to movement. Such articles shall be assembled at such points and in

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such manner as the inspector designates to facilitate inspection.

#### **§ 301.85-7 Attachment and disposition of certificates and permits.**

(a) If a certificate or permit is required for the interstate movement of regulated articles, the certificate or permit shall be securely attached to the outside of the container in which such articles are moved, except that, where the certificate or permit is attached to the waybill or other shipping document, and the regulated articles are adequately described on the certificate, permit, or shipping document, the attachment of the certificate or permit to each container of the articles is not required.

(b) In all cases, certificates or permits shall be furnished by the carrier to the consignee at the destination of the shipment.

#### **§ 301.85-8 Inspection and disposal of regulated articles and pests.**

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and golden nematodes as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) in accordance with instructions issued by the Deputy Administrator.

[37 FR 24330, Nov. 16, 1972, as amended at 66 FR 21052, Apr. 27, 2001]

#### **§ 301.85-9 Movement of live golden nematodes.**

Regulations requiring a permit for and otherwise governing the movement of live golden nematodes in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in part 330 of this chapter. Applications for permits for the movement of the pest may be made to the Deputy Administrator.

#### **§ 301.85-10 Nonliability of the Department.**

The U.S. Department of Agriculture disclaims liability for any costs incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

**Subpart—Sugarcane Diseases**

SOURCE: 48 FR 50059, Oct. 31, 1983, unless otherwise noted.

**QUARANTINE AND REGULATIONS****§ 301.87 Quarantine; restrictions on interstate movement of specified articles.<sup>1,2</sup>**

(a) *Notice of quarantine.* Under the authority of sections 411, 412, 414, and 434 of the Plant Protection Act (7 U.S.C. 7711, 7712, 7714, and 7754), the Secretary of Agriculture quarantines Hawaii to prevent the artificial spread of leaf scald disease and quarantines Puerto Rico to prevent the artificial spread of gummosis disease and leaf scald disease. The regulations in this subpart govern the interstate movement from Hawaii and Puerto Rico of the regulated articles described in § 301.87-2.

(b) *Quarantine restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

[48 FR 50059, Oct. 31, 1983, as amended at 66 FR 21052, Apr. 27, 2001]

**§ 301.87-1 Definitions.**

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

*Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that the article is eligible for interstate movement in accordance with § 301.87-5(a) of this subpart.

<sup>1</sup>Any inspector is authorized to stop and inspect persons and means of conveyance, and to hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

<sup>2</sup>Regulations concerning the movement of gummosis bacteria and leaf scald bacteria in interstate or foreign commerce are contained in part 330 of this chapter.

*Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to such provisions.

*Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his or her stead has been or may hereafter be delegated.

*Gummosis disease.* A dangerous plant disease of sugarcane which is caused by the highly infectious bacterium, *Xanthomonas vasculorum* (Cobb) Dowson, and which is not widely prevalent or distributed within and throughout the United States.

*Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantine and regulations in this subpart.

*Interstate.* From any State into or through any other State.

*Leaf scald disease.* A dangerous plant disease of sugarcane which is caused by the highly infectious bacterium, *Xanthomonas albilineans* (Ashby) Dowson, and which is not widely prevalent or distributed within and throughout the United States.

*Limited permit.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that the regulated article is eligible for interstate movement in accordance with § 301.87-5(b) of this subpart.

*Moved (movement, move).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or caused or allowed to be moved by any means. "Movement" and "move" shall be construed in accordance with this definition.



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*Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

*Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

*Regulated area.* Any quarantined State, or any portion thereof, listed as a regulated area in § 301.87-3(c) of this subpart, or otherwise designated as a regulated area in accordance with § 301.87-3(b) of this subpart.

*Regulated article.* Any article listed in § 301.87-2(a), (b), (c), (d), or otherwise designated as a regulated article in accordance with § 301.87-2(e).

*State.* Any State, Territory, or District of the United States, including the Commonwealth of Puerto Rico.

*Sugarcane disease.* This means leaf scald disease with respect to activities in Hawaii, and means gummosis disease or leaf scald disease with respect to activities in Puerto Rico.

[48 FR 50059, Oct. 31, 1983, as amended at 52 FR 31374, Aug. 20, 1987; 66 FR 21052, Apr. 27, 2001]

## § 301.87-2 Regulated articles.

(a) Sugarcane plants, whole or in part, including true seed and bagasse, but not including pieces of cane boiled for a minimum of 30 minutes during processing into sugarcane chews;

(b) Used sugarcane processing equipment (sugarcane mill equipment, such as equipment used for extracting and refining sugarcane juice; and experimental devices, such as devices used for extracting sugarcane juice);

(c) Used sugarcane field equipment (equipment used for sugarcane field production purposes, e.g. planters, tractors, discs, cultivators, and vehicles);

(d) Sugarcane juice; and

(e) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph (a), (b), (c), or (d) of this section, when it is determined by an inspector that it presents a risk of spread of a sugarcane disease and the person in possession of it has actual notice that the product,

article, or means of conveyance is subject to the restrictions of this section.

[48 FR 50059, Oct. 31, 1983, as amended at 52 FR 31374, Aug. 20, 1987]

## § 301.87-3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, each quarantined State, or each portion thereof, in which a sugarcane disease has been found by an inspector or in which the Deputy Administrator has reason to believe that a sugarcane disease is present, or each portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of its proximity to a sugarcane disease or its inseparability for quarantine enforcement purposes from localities in which a sugarcane disease occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of a sugarcane disease.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such an area. Written notice of the designation shall be given to the owner or person in possession of the nonregulated area and, thereafter, the interstate movement of any regulated article from the area shall be subject to the applicable provisions of this subpart. As soon as practicable, the area shall be added to the list in paragraph (c) of this section or the designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

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(c) The areas described below are designated as regulated areas;

*Hawaii*

All of Hawaii.

*Puerto Rico.*

All of Puerto Rico.

**§ 301.87-4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.<sup>3</sup>**

Any regulated article may be moved interstate from any regulated area in a quarantined State if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.87-5 and 301.87-8 of this subpart, or

(b) Without a certificate or limited permit, if

(1) Moved directly through any regulated area, and

(2) The article originated outside of any regulated area, and

(3) The point of origin of the article is clearly indicated by shipping documents, its identity has been maintained, and it has not been used for the production of sugarcane while in the regulated area.

**§ 301.87-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate shall be issued by an inspector for the movement of a regulated article if the inspector:

(1)(i) Determines that it has been treated under the direction of an inspector<sup>4</sup> in accordance with § 301.87-10 of this subpart, or

(ii) Determines based on inspection of the article and the premises of origin that it is free from sugarcane diseases;<sup>5</sup>

<sup>3</sup>Requirements under all other applicable Federal domestic plant quarantines must also be met.

<sup>4</sup>Treatments shall be monitored by inspectors in order to assure compliance with requirements in this subpart.

<sup>5</sup>The term *sugarcane diseases* means leaf scald disease with respect to movement of regulated articles from Hawaii and means gummosis disease and leaf scald disease with respect to movements of regulated articles from Puerto Rico.

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>6</sup> to prevent the spread of sugarcane diseases; and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines applicable to the article.

(b) A limited permit shall be issued by an inspector for the movement of a regulated article if the inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved:

(i) For a specified purpose (such as for consumption or manufacturing) stated on the limited permit, other than for processing or harvesting sugarcane; and

(ii) To a specified destination stated on the limited permit, which is not in a county or parish where sugarcane is produced, and which is not within 10 miles of a sugarcane field;

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>6</sup> to prevent the spread of sugarcane diseases; and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines applicable to the article.

(c) Certificates and limited permits for shipments of regulated articles may be issued by an inspector or by any person engaged in the business of growing, handling, or moving regulated articles provided such person is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of a regulated article if the person has treated the regulated article to destroy infection in accordance with the provisions of § 301.87-10 of this subpart and the inspector has made the determination that the article is otherwise eligible for a certificate in accordance with paragraph (a) of this section; or if the

<sup>6</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

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inspector has made the determination that the article is eligible for a certificate in accordance with paragraph (a) of this section without such treatment. Any such person may execute and issue a limited permit for interstate movement of a regulated article when the inspector has made the determination that the article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if the inspector determines that its holder has not complied with any condition under the regulations for its use. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal in writing, stating the reasons for the decision as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict under rules of practice which shall be adopted by the Administrator of the Animal and Plant Health Inspection Service, USDA, for the proceeding.

[48 FR 50059, Oct. 31, 1983, as amended at 66 FR 21053, Apr. 27, 2001]

**§ 301.87-6 Compliance agreement; cancellation.**

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.<sup>7</sup> The compliance agree-

<sup>7</sup>Compliance Agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236, and from local offices of Plant Protection and Quarantine. (Local offices are listed in telephone directories.)

ment shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, in which the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant to such provisions.

(b) Any compliance agreement may be canceled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant to such provisions. If the cancellation is oral, the decision and the reasons for the cancellation shall be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Deputy Administrator within ten days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for the decision, as promptly as circumstances allow. If there is a conflict as to any material fact, a hearing shall be held to resolve the conflict under rules of practice which shall be adopted by the Administrator of the Animal and Plant Health Inspection Service, USDA, for the proceeding.

[48 FR 50059, Oct. 31, 1983, as amended at 59 FR 67609, Dec. 30, 1994]

**§ 301.87-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.87-5(c) of this subpart) who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector<sup>8</sup> to

<sup>8</sup>Inspectors are assigned to local offices of Plant Protection and Quarantine, which are listed in telephone directories. Information concerning local offices may also be obtained

take any necessary action under this subpart prior to movement of the regulated article.

(b) The regulated article shall be assembled at whatever point and in whatever manner the inspector designates as necessary to comply with the requirements of this subpart.

[48 FR 50059, Oct. 31, 1983, as amended at 59 FR 67609, Dec. 30, 1994]

#### § 301.87-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the container containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; provided however, that the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping document only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify the article.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

#### § 301.87-9 Costs and charges.

The services of the inspector shall be furnished without cost. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

#### § 301.87-10 Treatments.

Treatment for regulated articles shall be as follows:

(a) *Seedpieces (pieces of sugarcane, sets) or canes of sugarcane*: Presoak for 24

from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

hours in water at room temperature and then immerse in water at 50 °C (122 °F) for 3 hours.

NOTE: Some seedpieces or canes of sugarcane which have germinated may be damaged by this procedure.

(b) *True seed (fuzz)*: Immerse in 0.525 percent sodium hypochlorite solution for 30 minutes (solution shall contain 1 part of solution containing 5.25 percent sodium hypochlorite with 9 parts water by volume). Air dry at least 8 hours before packaging.

(c) *Bagasse*: Subject to dry heat at 70 °C (158 °F) for 2 hours.

(d) *Sugarcane harvesting and processing equipment*: Remove all debris and soil from the equipment with water at high pressure (at least 300 pounds per square inch) or with steam.

(e) *Sugarcane juice*: Heat at 100 °C (212 °F) for 10 or more minutes.

[48 FR 50059, Oct. 31, 1983, as amended at 52 FR 31374, Aug. 20, 1987]

### Subpart—Karnal Bunt

SOURCE: 61 FR 52207, Oct. 4, 1996, unless otherwise noted.

#### § 301.89-1 Definitions.

*Actual price received*. The net price after adjustment for any premiums or discounts stated on the sales receipt.

*Administrator*. The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service (APHIS)*. The Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

*Certificate*. A document in which an inspector or a person operating under a compliance agreement affirms that a specified regulated article meets the requirements of this subpart and may be moved to any destination.

*Compliance agreement*. A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, in which the person agrees to comply with the provisions of this subpart and any conditions imposed under this subpart.

*Contaminated seed*. Seed from sources in which the Karnal bunt pathogen (*Tilletia indica* (Mitra) Mundkur) has

been determined to exist by the presence of bunted kernels or teliospores.

*Contract price.* The net price after adjustment for any premiums or discounts stated in the contract.

*Conveyances.* Containers used to move wheat, durum wheat, or triticale, or their products, including trucks, trailers, railroad cars, bins, and hoppers.

*Distinct definable area.* A commercial wheat production area of contiguous fields that is separated from other wheat production areas by desert, mountains, or other nonagricultural terrain as determined by an inspector, based on survey results.

*Grain.* Wheat, durum wheat, and triticale used for consumption or processing.

*Grain storage facility.* That part of a grain handling operation or unit or a grain handling operation, consisting of structures, conveyances, and equipment that receive, unload, and store, grain, and that is able to operate as an independent unit from other units of the grain handling operation. A grain handling operation may be one grain storage facility or may be comprised of many grain storage facilities on a single premises.

*Hay.* Host crops cut and dried for feeding to livestock. Hay cut after reaching the dough stage may contain mature kernels of the host crop.

*Host crops.* Plants or plant parts, including grain, seed, or hay, of wheat, durum wheat, and triticale.

*Infestation (infected).* The presence of Karnal bunt, or any identifiable stage of development (*i.e.*, bunted kernels in grain, bunted kernels or teliospores in seed) of the fungus *Tilletia indica* (Mitra) Mundkur, or the existence of circumstances that make it reasonable to believe that Karnal bunt is present.

*Inspector.* An APHIS employee or designated cooperator/collaborator authorized by the Administrator to enforce the provisions of this subpart.

*Karnal bunt.* A plant disease caused by the fungus *Tilletia indica* (Mitra) Mundkur.

*Limited permit.* A document in which an inspector affirms that a specified regulated article not eligible for a certificate is eligible for movement only to a specified destination and in ac-

cordance with conditions specified on the permit.

*Mechanized cultivating equipment and mechanized harvesting equipment.* Mechanized equipment used for soil tillage, including tillage attachments for farm tractors—*e.g.*, tractors, disks, plows, harrows, planters, and subsoilers; mechanized equipment used for harvesting purposes—*e.g.*, combines, grain buggies, trucks, swathers, and hay balers.

*Movement (moved).* The act of shipping, transporting, delivering, or receiving for movement, or otherwise aiding, abetting, inducing or causing to be moved.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or any other legal entity.

*Plant.* Any plant (including any plant part) for or capable of propagation, including a tree, a tissue culture, a plantlet culture, pollen, a shrub, a vine, a cutting, a graft, a scion, a bud, a bulb, a root, and a seed.

*Seed.* Wheat, durum wheat, and triticale used for propagation.

*Soil.* The loose surface material of the earth in which plants grow, in most cases consisting of disintegrated rock with an admixture of organic material.

*Soil-moving equipment.* Equipment used for moving or transporting soil, including, but not limited to, bulldozers, dump trucks, or road scrapers.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

*Straw.* The vegetative material left after the harvest of host crops. Straw is generally used as animal feed, bedding, mulch, or for erosion control.

*Tilling.* The turning of a minimum of the top 6 inches of soil.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23624, May 1, 1997; 62 FR 24751, May 6, 1997; 63 FR 31599, June 10, 1998; 64 FR 23752, May 4, 1999; 69 FR 8095, Feb. 23, 2004]

#### § 301.89-2 Regulated articles.

The following are regulated articles:

(a) Conveyances, including trucks, railroad cars, and other containers used to move host crops produced in a

regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(b) Grain elevators/equipment/structures used for storing and handling host crops produced in a regulated area that have tested positive for Karnal bunt through the presence of bunted kernels;

(c) Seed conditioning equipment and storage/handling equipment/structures that have been used in the production of wheat, durum wheat, and triticale found to contain the spores of *Tilletia indica*;

(d) Plants or plant parts (including grain, seed, and straw) and hay cut after reaching the dough stage of all varieties of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*) that are produced in a regulated area, except for straw/stalks/seed heads for decorative purposes that have been processed or manufactured prior to movement and are intended for use indoors;

(e) *Tilletia indica* (Mitra) Mundkur;

(f) Mechanized harvesting equipment that has been used in the production of wheat, durum wheat, or triticale that has tested positive for Karnal bunt through the presence of bunted kernels; and

(g) Any other product, article, or means of conveyance when:

(1) An inspector determines that it presents a risk of spreading Karnal bunt based on appropriate testing and the intended use of the product, article, or means of conveyance; and

(2) The person in possession of the product, article, or means of conveyance has been notified that it is regulated under this subpart.

[69 FR 8095, Feb. 23, 2004]

#### § 301.89-3 Regulated areas.

(a) The Administrator will regulate each State or each portion of a State that is infected.

(b) Less than an entire State will be listed as a regulated area only if the Administrator:

(1)(i) Determines that the State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.89-2 that

are equivalent to the movement restrictions imposed by this subpart; and

(ii) Determines that designating less than the entire State as a regulated area will prevent the spread of Karnal bunt; or

(2) Exercises his or her extraordinary emergency authority under 7 U.S.C. 150dd.

(c) The Administrator may include noninfected acreage within a regulated area due to its proximity to an infestation or inseparability from the infected locality for regulatory purposes, as determined by:

(1) Projections of the spread of Karnal bunt along the periphery of the infestation;

(2) The availability of natural habitats and host materials within the noninfected acreage that are suitable for establishment and survival of Karnal bunt; and

(3) The necessity of including uninfected acreage within the regulated area in order to establish readily identifiable boundaries.

(d) The Administrator or an inspector may temporarily designate any nonregulated area as a regulated area in accordance with the criteria specified in paragraphs (a), (b), and (c) of this section. The Administrator will give written notice of this designation to the owner or person in possession of the nonregulated area, or, in the case of publicly owned land, to the person responsible for the management of the nonregulated area. Thereafter, the movement of any regulated article from an area temporarily designated as a regulated area is subject to this subpart. As soon as practicable, this area either will be added to the list of designated regulated areas in paragraph (g) of this section, or the Administrator will terminate the designation. The owner or person in possession of, or, in the case of publicly owned land, the person responsible for the management of, an area for which the designation is terminated will be given written notice of the termination as soon as practicable.

(e) The Administrator will classify a field or area as a regulated area when:

(1) It is a field planted with seed from a lot found to contain a bunted wheat kernel; or

(2) It is a distinct definable area that contains at least one field that was found during survey to contain a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel); or

(3) It is a distinct definable area that contains at least one field that has been determined to be associated with grain at a handling facility containing a bunted kernel of a host crop (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to the field associated with the bunted kernel at the handling facility).

(f) A field known to have been infected with Karnal bunt, as well as any non-infected acreage surrounding the field, will be released from regulation if:

(1) The field has been permanently removed from crop production; or

(2) The field is tilled at least once per year for a total of 5 years (the years need not be consecutive). After tilling, the field may be planted with a crop or left fallow. If the field is planted with a host crop, the crop must test negative, through the absence of bunted kernels, for Karnal bunt.

(g) The following areas or fields are designated as regulated areas (maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road Unit 98, Riverdale, MD 20737-1236):

#### ARIZONA

*La Paz County.* Beginning at the northeast corner of sec. 19, T. 8 N., R. 20 W.; then south to the southeast corner of sec. 31, T. 7 N., R. 20 W.; then west to the northeast corner of sec. 2, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 2, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 2, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 15, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 13, T. 6 N., R. 22 W.; then north to the northwest corner of sec. 24, T. 7 N., R. 22 W.; then east to the northeast corner of sec. 24, T. 7 N., R. 22 W.; then north to the point of intersection with the Colorado River; then northeast along the

Colorado River to its intersection with the northern boundary of sec. 16, T. 8 N., R. 21 W.; then east to the northeast corner of sec. 14, T. 8 N., R. 21 W.; then south to the southeast corner of sec. 14, T. 8 N., R. 21 W.; then east to the point of beginning.

*Maricopa County.* (1) Beginning at the southeast corner of sec. 8, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 8, T. 1 S., R. 2 E.; then south to the southeast corner of sec. 18, T. 1 S., R. 2 E.; then west to the southwest corner of sec. 14, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 14, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 9, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 9, T. 1 S., R. 1 E.; then west to the southwest corner of sec. 5, T. 1 S., R. 1 E.; then north to the northwest corner of sec. 5, T. 1 S., R. 1 E.; then west to the northeast corner of sec. 6, T. 1 S., R. 1 W.; then south to the southeast corner of sec. 7, T. 1 S., R. 1 W.; then west to the northeast corner of sec. 14, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 14, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 20, T. 1 S., R. 2 W.; then south to the southeast corner of sec. 20, T. 1 S., R. 2 W.; then west to the northeast corner of sec. 29, T. 1 S., R. 3 W.; then south to the southeast corner of sec. 29, T. 1 S., R. 3 W.; then west to the southwest corner of sec. 26, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 14, T. 1 N., R. 5 W.; then east to the southwest corner of sec. 7, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 7, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 7, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 5, T. 1 N., R. 2 W.; then east to the northeast corner of sec. 5, T. 1 N., R. 2 W.; then north to the northwest corner of sec. 33, T. 2 N., R. 2 W.; then east to the northeast corner of sec. 33, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 3, T. 3 N., R. 2 W.; then east to the northeast corner of sec. 1, T. 3 N., R. 1 W.; then south to the northwest corner of sec. 19, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 20, T. 3 N., R. 1 E.; then south to the northeast corner of sec. 29, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 27, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 27, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 35, T. 3 N., R. 1 E.; then south to the southeast corner of sec. 35, T. 3 N., R. 1 E.; then east to the northeast corner of sec. 1, T. 2 N., R. 1 E.; then south to the northeast corner of sec. 1, T. 1 N., R. 1 E.; then east to the northeast corner of sec. 4, T. 1 N., R. 2 E.; then south to the northwest corner of sec. 15, T. 1 N., R. 2 E.; then east to the northeast corner of sec. 15, T. 1 N., R. 2 E.; then south to the southeast corner of sec. 27, T. 1 N., R. 2 E.; then west to the southwest corner of sec. 27, T. 1 N., R. 2 E.; then south to the southeast corner of sec.

33, T. 1 N., R. 2 E.; then west to the southwest corner of sec. 33, T. 1 N., R. 2 E.; then south to the point of beginning.

(2) Beginning at the intersection of the Maricopa/Pinal County line and the southeast corner of sec. 36, T. 2 S., R. 7 E.; then west along the Maricopa/Pinal County line to the southwest corner of sec. 33, T. 2 S.; R. 5 E.; then north to the northwest corner of sec. 33; then west to the southwest corner of sec. 30, T. 2 S., R. 5 E.; then north to the southeast corner of sec. 25, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 25, T. 2 S., R. 4 E.; then north to the southwest corner of sec. 13, T. 2 S., R. 4 E.; then west to the southwest corner of sec. 15, T. 2 S., R. 4 E.; then north to the northwest corner of sec. 3, T. 2 S., R. 4 E.; then east to the southwest corner of sec. 35, T. 1 S., R. 4 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the northeast corner of sec. 33, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 27, T. 1 S., R. 5 E.; then east to the northeast corner of sec. 27, T. 1 S., R. 5 E.; then north to the northwest corner of sec. 23, T. 1 S., R. 5 E.; then east to the northeast corner of sec. 19, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 8, T. 1 S., R. 6 E.; then east to the southwest corner of sec. 3, T. 1 S., R. 6 E.; then north to the northwest corner of sec. 3, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 2, T. 1 S., R. 6 E.; then south to the southeast corner of sec. 2, T. 1 S., R. 6 E.; then east to the northeast corner of sec. 7, T. 1 S., R. 7 E.; then south to the northwest corner of sec. 5, T. 2 S., R. 7 E.; then east to the northeast corner of sec. 3, T. 2 S., R. 7 E.; then north to the northwest corner of sec. 35, T. 1 S., R. 7 E.; then east to the northeast corner of sec. 36, T. 1 S., R. 7 E. and the Maricopa/Pinal County line; then south along the Maricopa/Pinal County line to the point of beginning.

(3) Beginning at the southeast corner of sec. 30, T. 6 S., R. 5 W.; then west to the northeast corner of sec. 33, T. 6 S., R. 6 W.; then south to the southeast corner of sec. 33, T. 6 S., R. 6 W.; then west to the southwest corner of sec. 36, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 36, T. 6 S., R. 7 W.; then west to the southwest corner of sec. 26, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 23, T. 6 S., R. 7 W.; then west to the southeast corner of sec. 18, T. 6 S., R. 7 W.; then north to the northeast corner of sec. 6, T. 6 S., R. 7 W.; then west to the southeast corner of sec. 31, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 29, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 29, T. 5 S., R. 7 W.; then east to the southwest corner of sec. 22, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 22, T. 5 S., R. 7 W.; then east to the southwest corner of sec. 14, T. 5 S., R. 7 W.; then north to the northwest corner of sec. 14, T. 5 S., R. 7 W.; then east to the

northeast corner of sec. 13, T. 5 S., R. 6 W.; then south to the southeast corner of sec. 24, T. 5 S., R. 6 W.; then east to the northeast corner of sec. 30, T. 5 S., R. 5 W.; then south to the southeast corner of sec. 30, T. 5 S., R. 5 W.; then east to the northeast corner of sec. 32, T. 5 S., R. 5 W.; then south to the southeast corner of sec. 32, T. 5 S., R. 5 W.; then east to the northeast corner of sec. 5, T. 6 S., R. 5 W.; then south to the southeast corner of sec. 20, T. 6 S., R. 5 W.; then west to the northeast corner of sec. 30, T. 6 S., R. 5 W.; then south to the point of beginning.

(4) Beginning at the southeast corner of sec. 36, T. 2 N., R. 5 E.; then west to the northeast corner of sec. 4, T. 1 N., R. 5 E.; then south to the southeast corner of sec. 4, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 4, T. 1 N., R. 5 E.; then south to the southeast corner of sec. 17, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 17, T. 1 N., R. 5 E.; then north to the northwest corner of sec. 17, T. 1 N., R. 5 E.; then west to the southwest corner of sec. 12, T. 1 N., R. 4 E.; then north to the northwest corner of sec. 12, T. 1 N., R. 4 E.; then east to the northeast corner of sec. 12, T. 1 N., R. 4 E.; then north to the northwest corner of sec. 7, T. 2 N., R. 5 E.; then east to the northeast corner of sec. 12, T. 2 N., R. 5 E.; then south to the point of beginning.

*Pinal County:* (1) Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 31, T. 1 S., R. 8 E.; then east to the northeast corner of sec. 32, T. 1 S., R. 8 E.; then south to the northwest corner of sec. 4, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 4, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 4, T. 3 S., R. 8 E.; then west to the northeast corner of sec. 8, T. 3 S., R. 8 E.; then south to the southeast corner of sec. 8, T. 3 S., R. 8 E.; then west to the southwest corner of sec. 12, T. 3 S., R. 7 E.; then north to the southeast corner of sec. 2, T. 3 S., R. 7 E.; then west to the northeast corner of sec. 9, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 28, T. 3 S., R. 6 E.; then west to the southwest corner of sec. 28, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 32, T. 3 S., R. 6 E.; then west to the southwest corner of sec. 35, T. 3 S., R. 5 E.; then north to the northwest corner of sec. 35, T. 3 S., R. 5 E.; then west to the southwest corner of sec. 27, T. 3 S., R. 5 E.; then north to the northwest corner of sec. 10, T. 3 S., R. 5 E.; then west to the southwest corner of sec. 4, T. 3 S., R. 5 E.; then north to the northwest corner of sec. 4, T. 3 S., R. 5 E. and the intersection of the Maricopa/Pinal County line; then east along the Maricopa/Pinal County line to the northwest corner of sec. 6, T. 3 S., R. 8 E.; then north along the Maricopa/Pinal County line to the point of beginning.



(2) Beginning at the southeast corner of sec. 5, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 1, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 14, T. 6 S., R. 3 E.; then west to the southwest corner of sec. 14, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 22, T. 6 S., R. 3 E.; then west to the northeast corner of sec. 30, T. 6 S., R. 3 E.; then south to the southeast corner of sec. 30, T. 6 S., R. 3 E.; then west to the southwest corner of sec. 30, T. 6 S., R. 3 E.; then north to the southeast corner of sec. 25, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 25, T. 6 S., R. 2 E.; then north to the southeast corner of sec. 11, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 11, T. 6 S., R. 2 E.; then north to the northwest corner of sec. 35, T. 4 S., R. 2 E.; then east to the northeast corner of sec. 35, T. 4 S., R. 2 E.; then north to the northwest corner of sec. 25, T. 4 S., R. 2 E.; then east to the southwest corner of sec. 20, T. 4 S., R. 3 E.; then north to the northwest corner of sec. 20, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 24, T. 4 S., R. 3 E.; then south to the northwest corner of sec. 24, T. 4 S., R. 3 E.; then east to the northeast corner of sec. 28, T. 4 S., R. 4 E.; then south to the northwest corner of sec. 34, T. 4 S., R. 4 E.; then east to the northeast corner of sec. 35, T. 4 S., R. 4 E.; then south to the northwest corner of sec. 1, T. 5 S., R. 4 E.; then east to the northeast corner of sec. 1, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 1, T. 5 S., R. 4 E.; then west to the northeast corner of sec. 12, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 24, T. 5 S., R. 4 E.; then west to the southwest corner of sec. 24, T. 5 S., R. 4 E.; then south to the northeast corner of sec. 35, T. 5 S., R. 4 E.; then west to the northwest corner of sec. 35, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 37, T. 5 S., R. 4 E.; then west to the northwest corner of sec. 50, T. 5 S., R. 4 E.; then south to the southeast corner of sec. 49, T. 6 S., R. 4 E.; then west to the northeast corner of sec. 5, T. 6 S., R. 4 E.; then south to the point of beginning.

(3) The following individual fields in Pinal County are regulated areas: 309021804 and 309050104.

#### CALIFORNIA

*Riverside County.* That portion of Riverside County known as the Palo Verde Valley (in part) bounded by a line drawn as follows: Beginning at the intersection of Neighbours Boulevard and West Hobson Way; then east on West Hobson Way to Arrowhead Boulevard; then north on Arrowhead Boulevard to West 11th Avenue; then east on West 11th Avenue to Defrain Boulevard; then north on Defrain Boulevard to 10th Avenue; then east on 10th Avenue to the southern boundary line of secs. 23 and 24, T. 6 S., R. 23 E.; then east along that boundary line to the Cali-

fornia/Arizona State line; then south along the State line to the southern boundary line of secs. 25, 26, and 27, T. 8 S., R. 22 E.; then west along that boundary line to 36th Avenue; then west on 36th Avenue to Stephenson Boulevard; then north on Stephenson Boulevard to 34th Avenue; then west on 34th Avenue to Keim Boulevard; then north along an imaginary line to the intersection of 28th Avenue and Keim Boulevard; then north on Keim Boulevard to its northernmost point; then from that point northeast along an imaginary line to the intersection of Stephenson Boulevard and West 14th Avenue; then east along West 14th Avenue to Neighbours Boulevard; then north on Neighbours Boulevard to the point of beginning.

#### TEXAS

*Baylor County.* (1) Beginning at the Knox/Baylor County line and the line of latitude 33.6752° N.; then east along the line of latitude 33.6752° N. to the line of longitude -99.3833° W.; then south along the line of longitude -99.3833° W. to the line of latitude 33.5802° N.; then west along the line of latitude 33.5802° N. to the line of longitude -99.3846° W.; then south along the line of longitude -99.3846° W. to the line of latitude 33.5305° N.; then west along the line of latitude 33.5305° N. to the Knox/Baylor County line; then north along the Knox/Baylor County line to the point of beginning.

(2) Beginning at the Baylor/Throckmorton County line and the line of longitude -99.1270° W.; then north along the line of longitude -99.1270° W. to the line of latitude 33.4447° N.; then east along the line of latitude 33.4447° N. to the line of longitude -99.0191° W.; then south along the line of longitude -99.0191° W. to the Baylor/Throckmorton County line; then west along the Baylor/Throckmorton County line to the point of beginning.

*Knox County.* Beginning at the Knox/Baylor County line and the line of latitude 33.5305° N.; then west along the line of latitude 33.5305° N. to the line of longitude -99.4960° W.; then north along the line of longitude -99.4960° W. to the line of latitude 33.5802° N.; then west along the line of latitude 33.5802° N. to the line of longitude -99.4971° W.; then north along the line of longitude -99.4971° W. to the line of latitude 33.6752° N.; then east along the line of latitude 33.6752° N. to the Knox/Baylor County line; then south along the Knox/Baylor County line to the point of beginning.

*Throckmorton County.* (1) Beginning at the Baylor/Throckmorton County line and the line of longitude -99.1270° W.; then east along the Baylor/Throckmorton County line to the line of longitude -99.0191° W.; then south along the line of longitude -99.0191° W. to the line of latitude 33.3535° N.; then west along the line of latitude 33.3535° N. to the line of longitude -99.1270° W.; then north

along the line of longitude  $-99.1270^{\circ}$  W. to the point of beginning.

(2) Beginning at the Throckmorton/Young County line and the line of latitude  $33.3003^{\circ}$  N.; then south along the Throckmorton/Young County line to the line of latitude  $33.1809^{\circ}$  N.; then west along the line of latitude  $33.1809^{\circ}$  N. to the line of longitude  $-98.9890^{\circ}$  W.; then north along the line of longitude  $-98.9890^{\circ}$  W. to the line of latitude  $33.2055^{\circ}$  N.; then west along the line of latitude  $33.2055^{\circ}$  N. to the line of longitude  $-99.0043^{\circ}$  W.; then north along the line of longitude  $-99.0043^{\circ}$  W. to the line of latitude  $33.3003^{\circ}$  N.; then east to the point of beginning.

*Young County.* Beginning at the Throckmorton/Young County line and the line of latitude  $33.3003^{\circ}$  N.; then east along the line of latitude  $33.3003^{\circ}$  N. to the line of longitude  $-98.8886^{\circ}$  W.; then south along the line of longitude  $-98.8886^{\circ}$  W. to the line of latitude  $33.2880^{\circ}$  N.; then east along the line of latitude  $33.2880^{\circ}$  N. to the line of longitude  $-98.8356^{\circ}$  W.; then south along the line of longitude  $-98.8356^{\circ}$  W. to the line of latitude  $33.1946^{\circ}$  N.; then west along the line of latitude  $33.1946^{\circ}$  N. to the line of longitude  $-98.8762^{\circ}$  W.; then south along the line of longitude  $-98.8762^{\circ}$  W. to the line of latitude  $33.1809^{\circ}$  N.; then west along the line of latitude  $33.1809^{\circ}$  N. to the Throckmorton/Young County line; then north along the Throckmorton/Young County line to the point of beginning.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23624, May 1, 1997; 62 FR 62505, Nov. 24, 1997; 63 FR 1, Jan. 2, 1998; 63 FR 50751, Sept. 23, 1998; 64 FR 23752, May 4, 1999; 65 FR 50596, Aug. 21, 2000; 66 FR 32210, June 14, 2001; 66 FR 37576, July 19, 2001; 66 FR 63152, Dec. 5, 2001; 67 FR 61978, Oct. 3, 2002; 69 FR 246, Jan. 5, 2004; 69 FR 8096, Feb. 23, 2004; 69 FR 27823, May 17, 2004; 70 FR 15555, Mar. 28, 2005; 70 FR 73555, Dec. 13, 2005; 71 FR 12992, Mar. 14, 2006; 71 FR 67434, Nov. 22, 2006]

#### § 301.89-4 Planting.

Any wheat, durum wheat, or triticale that originates within a regulated area must be tested and found free from bunted wheat kernels and spores before it may be used as seed within or outside a regulated area.

[69 FR 8096, Feb. 23, 2004]

#### § 301.89-5 Movement of regulated articles from regulated areas.

(a) Any regulated article may be moved from a regulated area into or through an area that is not regulated only if moved under the following conditions:

(1) With a certificate or limited permit issued and attached in accordance with §§ 301.89-6 and 301.89-10;

(2) Without a certificate or limited permit, provided that each of the following conditions is met:

(i) The regulated article was moved into the regulated area from an area that is not regulated;

(ii) The point of origin is indicated on a waybill accompanying the regulated article;

(iii) The regulated article is moved through the regulated area without stopping, or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of contamination with Karnal bunt, or has been treated in accordance with the methods and procedures prescribed in § 301.89-13 while in or moving through any regulated area; and

(iv) The article has not been combined or commingled with other articles so as to lose its individual identity;

(3) Without a certificate or limited permit, provided the regulated article is a soil sample being moved to a laboratory approved by the Administrator<sup>1</sup> to process, test, or analyze soil samples;

(b) When an inspector has probable cause to believe a person or means of conveyance is moving a regulated article, the inspector is authorized to stop the person or means of conveyance to determine whether a regulated article is present and to inspect the regulated article. Articles found to be infected by an inspector, and articles not in compliance with the regulations in this subpart, may be seized, quarantined, treated, subjected to other remedial

<sup>1</sup>Criteria that laboratories must meet to become approved to process, test, or analyze soil, and the list of currently approved laboratories, may be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Surveillance and Emergency Programs Planning and Coordination, 4700 River Road Unit 98, Riverdale, Maryland 20737-1236.

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measures, destroyed, or otherwise disposed of. Any treatments will be in accordance with the methods and procedures prescribed in § 301.89-13.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23627, May 1, 1997; 63 FR 50751, Sept. 23, 1998; 69 FR 8096, Feb. 23, 2004]

### § 301.89-6 Issuance of a certificate or limited permit.

(a) An inspector<sup>2</sup> or person operating under a compliance agreement will issue a certificate for the movement of a regulated article outside a regulated area if he or she determines that the regulated article:

(1) Is eligible for unrestricted movement under all other applicable Federal domestic plant quarantines and regulations;

(2) Is to be moved in compliance with any conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>3</sup> to prevent the artificial spread of Karnal bunt; and

(3)(i) Is free of Karnal bunt infestation, based on laboratory results of testing, and history of previous infestation;

(ii) Has been grown, produced, manufactured, stored, or handled in a manner that would prevent infestation or destroy all life stages of Karnal bunt; or

(iii) Has been treated in accordance with methods and procedures prescribed in § 301.89-13.

(b) To be eligible for movement under a certificate, hay cut after the dough stage or grain from a field within a regulated area must be tested prior to its movement from the field or before it is commingled with similar commodities and must be found free from bunted kernels. If bunted kernels are found,

the grain or hay will be eligible for movement only under a limited permit issued in accordance with paragraph (c) of this section, and the field of production will be considered positive for Karnal bunt.

(c) An inspector or a person operating under a compliance agreement will issue a limited permit for the movement outside the regulated area of a regulated article not eligible for a certificate if the inspector determines that the regulated article:

(1) Is to be moved to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit and/or compliance agreement), and this movement will not result in the artificial spread of Karnal bunt because Karnal bunt will be destroyed or the risk mitigated by the specified handling, utilization, or processing;

(2) Is to be moved in compliance with any additional conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the artificial spread of Karnal bunt; and

(3) Is eligible for movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(d) An inspector shall issue blank certificates and limited permits to a person operating under a compliance agreement in accordance with § 301.89-7 or authorize reproduction of the certificates or limited permits on shipping containers, or both, as requested by the person operating under the compliance agreement. These certificates and limited permits may then be completed and used, as needed, for the movement of regulated articles that have met the applicable requirements of paragraphs (a) and (b) of this section for the issuance of certificates or of paragraph (c) of this section for the issuance of limited permits.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23627, May 1, 1997; 63 FR 50751, Sept. 23, 1998; 64 FR 23754, May 4, 1999; 66 FR 21053, Apr. 27, 2001; 67 FR 21161, Apr. 30, 2002; 69 FR 8096, Feb. 23, 2004]

<sup>2</sup>Inspectors are assigned to local offices of APHIS, which are listed in local telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Surveillance and Emergency Programs Planning and Coordination, 4700 River Road Unit 98, Riverdale, Maryland 20737-1236.

<sup>3</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 431 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

**§ 301.89-7 Compliance agreements.**

Persons who grow, handle, or move regulated articles may enter into a compliance agreement<sup>4</sup> if such persons review with an inspector each provision of the compliance agreement, have facilities and equipment to carry out disinfestation procedures or application of chemical materials in accordance with § 301.89-13, and meet applicable State training and certification standards under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136b). Any person who enters into a compliance agreement with APHIS must agree to comply with the provisions of this subpart and any conditions imposed under this subpart.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23628, May 1, 1997; 69 FR 8096, Feb. 23, 2004]

**§ 301.89-8 Cancellation of a certificate, limited permit, or compliance agreement.**

Any certificate, limited permit, or compliance agreement may be canceled orally or in writing by an inspector whenever the inspector determines that the holder of the certificate or limited permit, or the person who has entered into the compliance agreement, has not complied with this subpart or any conditions imposed under this subpart. If the cancellation is oral, the cancellation will become effective immediately and the cancellation and the reasons for the cancellation will be confirmed in writing as soon as circumstances allow, but within 20 days after oral notification of the cancellation. Any person whose certificate, limited permit, or compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving the written cancellation notice. The appeal must state all of the facts and reasons that the person

<sup>4</sup>Compliance agreements may be initiated by contacting a local office of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices of Plant Protection and Quarantine may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Surveillance and Emergency Program Planning and Coordination, 4700 River Road Unit 98, Riverdale, Maryland 20737-1236.

wants the Administrator to consider in deciding the appeal. A hearing may be held to resolve any conflict as to any material fact. Rules of practice for the hearing will be adopted by the Administrator. As soon as practicable, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision.

**§ 301.89-9 Assembly and inspection of regulated articles.**

(a) Persons requiring certification or other services must request the services of an inspector<sup>5</sup> at least 24 hours before the services are needed.

(b) The regulated articles must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

[61 FR 52207, Oct. 4, 1996, as amended at 62 FR 23628, May 1, 1997; 64 FR 29550, June 2, 1999]

**§ 301.89-10 Attachment and disposition of certificates and limited permits.**

(a) The consignor must ensure that the certificate or limited permit authorizing movement of a regulated article is, at all times during movement, attached to:

- (1) The outside of the container encasing the regulated article;
- (2) The article itself, if it is not in a container; or
- (3) The consignee's copy of the accompanying waybill: Provided, that the descriptions of the regulated article on the certificate or limited permit, and on the waybill, are sufficient to identify the regulated article; and

(b) The carrier must furnish the certificate or limited permit authorizing movement of a regulated article to the consignee at the shipment's destination.

**§ 301.89-11 Costs and charges.**

The services of the inspector during normal business hours will be furnished without cost to persons requiring the services.

The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

<sup>5</sup>See footnote 2.

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### § 301.89-12 Cleaning, disinfection, and disposal.

(a) Mechanized harvesting equipment that has been used to harvest host crops that test positive for Karnal bunt based on the presence of bunted kernels must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89-13 prior to movement from a regulated area.

(b) Seed conditioning equipment that was used in the conditioning of seed that was tested and found to contain spores or bunted kernels of *Tilletia indica* must be cleaned and disinfected in accordance with § 301.89-13 prior to being used in the conditioning of seed that has tested negative for the spores of *Tilletia indica* or to being moved from a regulated area.

(c) Any grain storage facility, including on-farm storage, that is used to store seed that has tested bunted-kernel or spore positive or grain that has tested bunted-kernel positive must be cleaned and, if disinfection is determined to be necessary by an inspector, disinfected in accordance with § 301.89-13 if the facility will be used to store grain or seed in the future.

(d) Conveyances used to move bunted-kernel-positive host crops, including trucks, railroad cars, and other containers, that have sloping metal sides leading directly to a bottom door or slide chute, are self cleaning, and will not be required to be cleaned and disinfected.

(e) Spore-positive wheat, durum wheat, or triticale seed that has been treated with any chemical that renders it unfit for human or animal consumption must be disposed of by means of burial under a minimum of 24 inches of soil in a nonagricultural area that will not be cultivated or in an approved landfill.

[69 FR 8096, Feb. 23, 2004]

### § 301.89-13 Treatments.

All conveyances, mechanized harvesting equipment, seed conditioning equipment, grain elevators, and structures used for storing and handling wheat, durum wheat, or triticale required to be cleaned under this subpart must be cleaned by removing all soil

and plant debris. If disinfection is required by an inspector in addition to cleaning, the articles must be disinfected by one of the methods specified in paragraph (a), (b), or (c) of this section, unless a particular treatment is designated by an inspector. The treatment used must be that specified by an inspector:

(a) Wetting all surfaces to the point of runoff with one of the following 1.5 percent sodium hypochlorite solutions and letting stand for 15 minutes, then thoroughly washing down all surfaces after 15 minutes to minimize corrosion:

(1) One part Ultra Clorox brand regular bleach (6 percent sodium hypochlorite; EPA Reg. No. 5813-50) in 3 parts water; or

(2) One part CPPC Ultra Bleach 2 (6.15 percent sodium hypochlorite; EPA Reg. No. 67619-8) in 3.1 parts water.

(b) Applying steam to all surfaces until the point of runoff, and so that a critical temperature of 170 °F is reached at the point of contact.

(c) Cleaning with a solution of hot water and detergent, applied under pressure of at least 30 pounds per square inch, at a minimum temperature of 170 °F.

[69 FR 8096, Feb. 23, 2004]

### § 301.89-14 [Reserved]

### § 301.89-15 Compensation for growers, handlers, and seed companies in the 1999-2000 and subsequent crop seasons.

Growers, handlers, and seed companies are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1999-2000 and subsequent crop seasons to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Growers, handlers, and seed companies in areas under first regulated crop season.* Growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (a)(1) and (a)(2) of this section if: The wheat was grown in a State where the Secretary has declared an extraordinary emergency; and the wheat was grown in an area of that State that became regulated for Karnal bunt after

the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued after the crop was planted; and the wheat was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers and handlers of wheat grown in Oklahoma during the 2000-2001 growing season are eligible to receive compensation if the wheat was commingled in storage with wheat that meets the above requirements of this paragraph. Growers, handlers, and seed companies in areas under the first regulated crop season are eligible for compensation for 1999-2000 or subsequent crop season wheat and for wheat inventories in their possession that were unsold at the time the area became regulated. The compensation provided in this paragraph is for wheat grain, certified wheat seed, wheat held back from harvest by a grower in the 2000-2001 growing season for use as seed in the next growing season, and wheat grown with the intention of producing certified wheat seed.

(1) *Growers.* Growers of wheat in an area under the first regulated crop season, who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation as described in paragraphs (a)(1)(i) and (a)(1)(ii) of this section. However, compensation for positive-testing wheat will not exceed \$1.80 per bushel under any circumstances.

(i) If the wheat was grown under contract and a price was determined in the contract before the area where the wheat was grown became regulated, compensation will equal the contract price minus the actual price received by the grower.

(ii) If the wheat was not grown under contract or a price was determined in the contract after the area where the wheat was grown became regulated, compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the grower. The estimated market price will be calculated by APHIS for each class of

wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for certified wheat seed and wheat grown with the intention of producing certified wheat seed, and wheat grain.

(2) *Handlers and seed companies.* Handlers and seed companies who sell wheat grown in an area under the first regulated crop season are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler or seed company, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid is not contingent on the test results. Compensation will equal the estimated market price for the relevant class of wheat (meaning type of wheat, such as durum or hard red winter) minus the actual price received by the handler or seed company. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the harvest months for the area, with adjustments for transportation and other handling costs. Separate estimated market prices will be calculated for certified wheat seed and wheat grown with the intention of producing certified wheat seed, and wheat grain. However, compensation will not exceed \$1.80 per bushel under any circumstances.

(b) *Growers, handlers, and seed companies in previously regulated areas.* For the 1999-2000 crop season and the 2000-2001 crop season only, growers, handlers, and seed companies are eligible to receive compensation for the loss in value of their wheat in accordance with paragraphs (b)(1) and (b)(2) of this section if: The wheat was grown in a State where the Secretary has declared an extraordinary emergency; and the wheat was grown in an area of that State that became regulated for Karnal bunt before the crop was planted, or for which an Emergency Action Notification (PPQ Form 523) was issued before the crop was planted; and the wheat

was grown in an area that remained regulated or under Emergency Action Notification at the time the wheat was sold. Growers, handlers, and seed companies in previously regulated areas will not be eligible for compensation for wheat from the 2001-2002 and subsequent crop seasons; except that, for growers or handlers of wheat harvested in any field in the Texas counties of Archer, Baylor, Throckmorton, and Young during the 2000-2001 crop season that has not been found to contain a bunted wheat kernel, this requirement applies to compensation for wheat from the 2002-2003 and subsequent crop seasons. The compensation provided in this paragraph is for wheat grain, certified wheat seed, and wheat grown with the intention of producing certified wheat seed.

(1) *Growers.* Growers of wheat in a previously regulated area who sell wheat that was tested by APHIS and found positive for Karnal bunt prior to sale, or that was tested by APHIS and found positive for Karnal bunt after sale and the price received by the grower is contingent on the test results, are eligible to receive compensation at the rate of \$.60 per bushel of positive testing wheat.

(2) *Handlers and seed companies.* Handlers and seed companies who sell wheat grown in a previously regulated area are eligible to receive compensation only if the wheat was not tested by APHIS prior to purchase by the handler, but was tested by APHIS and found positive for Karnal bunt after purchase by the handler or seed company, as long as the price to be paid by the handler or seed company is not contingent on the test results. Compensation will be at the rate of \$.60 per bushel of positive testing wheat.

(c) *To claim compensation.* Compensation payments to growers, handlers, and seed companies under paragraphs (a) and (b) of this section will be issued by the Farm Service Agency (FSA). Claims for compensation for the 1999-2000 crop season must be received by FSA on or before December 4, 2001. Claims for compensation for subsequent crop seasons must be received by FSA on or before March 1 of the year following that crop season. The Administrator may extend the deadline, upon

request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates. To claim compensation, a grower, handler, or seed company must complete and submit to the local FSA county office the following documents:

(1) *Growers, handlers, and seed companies.* A grower, handler, or seed company must submit a Karnal Bunt Compensation Claim form, provided by FSA. If the wheat was grown in an area that is not a regulated area, but for which an Emergency Action Notification (PPQ Form 523) (EAN) has been issued, the grower, handler, or seed company must submit a copy of the EAN. Growers, handlers, and seed companies must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the wheat that tested positive (such as a copy of a facility weigh ticket, or other verification). For compensation claims for wheat seed, a grower or seed company must submit documentation showing that the wheat is either certified seed or was grown with the intention of producing certified seed (this documentation may include one or more of the following types of documents: an application to the State seed certification agency for field inspection; a bulk sale certificate; certification tags or labels issued by the State seed certification agency; or a document issued by the State seed certification agency verifying that the wheat is certified seed);

(2) *Growers.* In addition to the documents required in paragraph (c)(1) of this section, growers must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the grower. Growers compensated under paragraph (b)(1) of this section (previously regulated areas) whose wheat was not tested prior to sale must submit documentation showing that the price paid to the grower was contingent on test results (such as a copy of the receipt for the final sale of the wheat or a copy of the contract the grower has for the wheat, if this information appears on those documents).

(3) *Handlers and seed companies.* In addition to the documents required in paragraph (c)(1) of this section, handlers and seed companies must submit a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the handler or seed company. The handler or seed company must also submit documentation showing that the price paid or to be paid to the grower is not contingent on the test results (such as a copy of the receipt for the purchase of the wheat or a copy of the contract the handler or seed company has with the grower, if this information appears on those documents).

(d) *Special allowance for negative wheat grown in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000-2001 growing season.* Notwithstanding any other provision of this section, wheat that was harvested from fields in Archer, Baylor, Throckmorton, or Young Counties, TX, in the 2000-2001 growing season, and that tested negative for Karnal bunt after harvest, is eligible for compensation in accordance with paragraph (a) of this section.

(e) *Special allowance for disposal costs for treated uncertified wheat seed in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000-2001 growing season.* Notwithstanding any other provision of this section, growers in Archer, Baylor, Throckmorton, or Young Counties, TX, who own treated uncertified wheat seed that tested positive for Karnal bunt spores during the 2000-2001 growing season are eligible for compensation in accordance with this paragraph. The grower is eligible for compensation for the costs of disposing of such wheat seed, by burial on the grower's premises, by burial at a landfill, or through another means approved by APHIS. The compensation for disposing of wheat seed by burial on the grower's premises is \$1.00 per bushel. The compensation for disposing of wheat seed by burial at a landfill, or through another means approved by APHIS, is the actual cost of disposal, up to \$1.20 per bushel, as verified by receipts for disposal costs. To apply for this compensation, the grower must submit a Karnal Bunt Compensation Claim form, provided by FSA, and

must also submit a copy of the Karnal bunt certificate issued by APHIS that shows the Karnal bunt test results, and verification as to the actual (not estimated) weight of the uncertified wheat seed that tested positive for spores (such as a copy of a facility weigh ticket, or other verification). For seed disposed of by burial at a landfill the grower must also submit one or more receipts for the disposal costs of the uncertified wheat seed, showing the total bushels destroyed and the total disposal costs (landfill fees, transportation costs, etc.).

[63 FR 31599, June 10, 1998, as amended at 64 FR 34113, June 25, 1999; 66 FR 40842, Aug. 6, 2001; 67 FR 21566, May 1, 2002]

**§ 301.89-16 Compensation for grain storage facilities, flour millers, National Survey participants, and certain custom harvesters and equipment owners or lessees for the 1999-2000 and subsequent crop seasons.**

Owners of grain storage facilities, flour millers, and participants in the National Karnal Bunt Survey are eligible to receive compensation from the United States Department of Agriculture (USDA) for the 1999-2000 and subsequent crop seasons to mitigate losses or expenses incurred because of the Karnal bunt regulations and emergency actions, as follows:

(a) *Decontamination of grain storage facilities.* Owners of grain storage facilities that are in States where the Secretary has declared an extraordinary emergency, and who have decontaminated their grain storage facilities pursuant to either an Emergency Action Notification (PPQ Form 523) issued by an inspector or a letter issued by an inspector ordering decontamination of the facilities, are eligible to be compensated, on a one time only basis for each facility for each covered crop year wheat, for up to 50 percent of the direct cost of decontamination. However, compensation will not exceed \$20,000 per grain storage facility (as defined in § 301.89-1). General clean-up, repair, and refurbishment costs are excluded from compensation. Compensation payments



will be issued by APHIS. To claim compensation, the owner of the grain storage facility must submit to an inspector records demonstrating that decontamination was performed on all structures, conveyances, or materials ordered by APHIS to be decontaminated. The records must include a copy of the Emergency Action Notification or the letter from an inspector ordering decontamination, contracts with individuals or companies hired to perform the decontamination, receipts for equipment and materials purchased to perform the decontamination, time sheets for employees of the grain storage facility who performed activities connected to the decontamination, and any other documentation that helps show the cost to the owner and that decontamination has been completed. Claims for compensation for the 1999-2000 crop season must be received by APHIS on or before December 4, 2001. Claims for compensation for the 2000-2001 crop season and beyond must be received by March 1 of the year following that crop season. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.

(b) *Flour millers.* Flour millers who, in accordance with a compliance agreement with APHIS, heat treat millfeed that is required by APHIS to be heat treated are eligible to be compensated at the rate of \$35.00 per short ton of millfeed. The amount of millfeed compensated will be calculated by multiplying the weight of wheat from the regulated area received by the miller by 25 percent (the average percent of millfeed derived from a short ton of grain). Compensation payments will be issued by APHIS. To claim compensation, the miller must submit to an inspector verification as to the actual (not estimated) weight of the wheat (such as a copy of a facility weigh ticket or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification). Flour millers must also submit verification that the millfeed was heat treated (such as a copy of the limited permit under which the wheat

was moved to a treatment facility and a copy of the bill of lading accompanying that movement; or a copy of PPQ Form 700 (which includes certification of processing) signed by the inspector who monitors the mill). Claims for compensation for the 1999-2000 crop season must be received by APHIS on or before December 4, 2001. Claims for compensation for the 2000-2001 crop season and beyond must be received by March 1 of the year following that crop season. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.

(c) *National Karnal Bunt Survey participants.* If a grain storage facility participating in the National Karnal Bunt Survey tests positive for Karnal bunt, the facility will be regulated, and may be ordered decontaminated, pursuant to either an Emergency Action Notification (PPQ Form 523) issued by an inspector or a letter issued by an inspector ordering decontamination of the facility. If the Secretary has declared an extraordinary emergency in the State in which the grain storage facility is located, the owner will be eligible for compensation as follows:

(1) *Loss in value of positive wheat.* The owner of the grain storage facility will be compensated for the loss in value of positive wheat. Compensation will equal the estimated market price for the relevant class of wheat minus the actual price received for the wheat. The estimated market price will be calculated by APHIS for each class of wheat, taking into account the prices offered by relevant terminal markets (animal feed, milling, or export) during the relevant time period for that facility, with adjustments for transportation and other handling costs. However, compensation will not exceed \$1.80 per bushel under any circumstances. Compensation payments for loss in value of wheat will be issued by the Farm Service Agency (FSA). To claim compensation, the owner of the facility must submit to the local FSA office a Karnal Bunt Compensation Claim form, provided by FSA. The owner of the facility must also submit

to FSA a copy of the Emergency Action Notification or letter from an inspector under which the facility is or was quarantined; verification as to the actual (not estimated) weight of the wheat (such as a copy of a facility weigh ticket or a copy of the bill of lading for the wheat, if the actual weight appears on those documents, or other verification); and a copy of the receipt for the final sale of the wheat, showing the total bushels sold and the total price received by the owner of the grain storage facility. Claims for compensation for the 1999-2000 crop season must be received by APHIS on or before December 4, 2001. Claims for compensation for the 2000-2001 crop season and beyond must be received by March 1 of the year following that crop season. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.

(2) *Decontamination of grain storage facilities.* The owner of the facility will be compensated on a one time only basis for each grain storage facility for each covered crop year wheat for the direct costs of decontamination of the facility at the same rate described under paragraph (a) of this section (up to 50 per cent of the direct costs of decontamination, not to exceed \$20,000 per grain storage facility). Compensation payments for decontamination of grain storage facilities will be issued by APHIS, and claims for compensation must be submitted in accordance with the provisions in paragraph (a) of this section. Claims for compensation for the 1999-2000 crop season must be received by APHIS on or before December 4, 2001. Claims for compensation for the 2000-2001 crop season and beyond must be received by March 1 of the year following that crop season. The Administrator may extend these deadlines upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before these dates.

(d) *Special allowances for custom harvesters and equipment owners or lessees for costs related to cleaning and disinfection of mechanized harvesting and other equipment in Archer, Baylor, Throckmorton, and Young Counties, TX, in the 2000-2001 crop season.* All claims for compensation under this paragraph §301.89-16(d) must be received by APHIS on or before September 6, 2005. The Administrator may extend this deadline upon written request in specific cases, when unusual and unforeseen circumstances occur that prevent or hinder a claimant from requesting compensation on or before this date. All compensation payments made under this paragraph §301.89-16(d) will be issued by APHIS. Claims for compensation should be sent to Plant Protection and Quarantine, APHIS, USDA, 304 West Main Street, Olney, TX 76374.

(1) *Custom harvesters.* (i) *Cleaning and disinfection of mechanized harvesting equipment.* Custom harvesters who harvested host crops that an inspector determined to be infected with Karnal bunt and that were grown in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000-2001 crop season are eligible to receive compensation for the cost of cleaning and disinfecting their mechanized harvesting equipment as required by §301.89-12(a). Compensation for the cost of cleaning and disinfection mechanized harvesting equipment used to harvest Karnal bunt-infected host crops will be either the actual cost or \$750 per cleaned machine, whichever is less. To claim compensation, a custom harvester must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000-2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000-2001 crop season prior to the designation of the county as a regulated area for Karnal bunt, signed by the customer with whom the custom harvester entered into the agreement; a copy of the PPQ-540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it had been used to harvest host crops

that an inspector determined to be infected with Karnal bunt and had been subsequently cleaned and disinfected; and a receipt showing the cost of the cleaning and disinfection.

(ii) *Contracts lost due to cleaning and disinfection.* Custom harvesters who harvested host crops that an inspector determined to be infected with Karnal bunt and that were grown in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000-2001 crop season are also eligible to be compensated for the revenue lost if they lost one contract due to downtime necessitated by cleaning and disinfection, if the contract to harvest Karnal bunt-infected host crops in a previously nonregulated area was signed before the area was declared a regulated area for Karnal bunt. Compensation will only be provided for one contract lost due to cleaning and disinfection. Compensation for any contract that was lost due to cleaning and disinfection will be either the full value of the contract or \$23.48 for each acre that was to have been harvested under the contract, whichever is less. To claim compensation, a custom harvester must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000-2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000-2001 crop season prior to the designation of the county as a regulated area for Karnal bunt, signed by the customer with whom the custom harvester entered into the agreement; a copy of the PPQ-540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it has been used to harvest host crops that an inspector determined to be infected with Karnal bunt and had been subsequently cleaned and disinfected; and the contract for harvesting in an area not regulated for Karnal bunt that had been lost due to time lost to cleaning and disinfecting harvesting equipment, signed on a date prior to the designation of the relevant county as a regu-

lated area for Karnal bunt, for which the custom harvester will receive compensation, or an affidavit stating that the custom harvester entered into an agreement to harvest in an area not regulated for Karnal bunt prior to the designation of the county as a regulated area for Karnal bunt and stating the number of acres that were to have been harvested and the amount the custom harvester was to have been paid under the agreement, signed by the customer with whom the custom harvester entered into the agreement.

(iii) *Fixed costs incurred during cleaning and disinfection.* Custom harvesters who harvested host crops that an inspector determined to be infected with Karnal bunt and that were grown in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000-2001 crop season who do not apply for compensation for a contract lost due to cleaning and disinfection as described in paragraph (d)(1)(ii) of this section are eligible for compensation for fixed costs incurred during cleaning and disinfection. Compensation for fixed costs incurred during cleaning and disinfection will be \$2,000. To claim compensation, a custom harvester must provide copies of a contract or other signed agreement for harvesting in Archer, Baylor, Throckmorton, or Young County during the 2000-2001 crop season, signed on a date prior to the designation of the county as a regulated area for Karnal bunt, or an affidavit stating that the custom harvester entered into an agreement to harvest in Archer, Baylor, Throckmorton, or Young County during the 2000-2001 crop season prior to the designation of the county as a regulated area for Karnal bunt, signed by the customer with whom the custom harvester entered into the agreement; and a copy of the PPQ-540 certificate issued to allow the movement of mechanized harvesting equipment from a regulated area after it has been used to harvest host crops that an inspector determined to be infected with Karnal bunt and has been subsequently cleaned and disinfected.

(2) *Other equipment; cleaning and disinfection.* Owners or lessees of equipment other than mechanized harvesting equipment and seed conditioning equipment that came into contact with host crops that an inspector determined to be infected with Karnal bunt in Archer, Baylor, Throckmorton, or Young Counties, TX, during the 2000-2001 crop season and that was required by an inspector to be cleaned and disinfected are eligible for compensation for the cost of cleaning and disinfection. Compensation for the cleaning and disinfection of such equipment will be \$100. To receive this compensation, owners or lessees must submit a copy of the PPQ-540 certificate issued to allow the movement of the equipment from a regulated area after it had been in contact with host crops that an inspector determined to be infected with Karnal bunt and had been subsequently cleaned and disinfected.

(Approved by the Office of Management and Budget under control number 0579-0248.)

[63 FR 31600, June 10, 1998, as amended at 64 FR 34113, June 25, 1999; 66 FR 40842, Aug. 6, 2001; 69 FR 24915, May 5, 2004; 69 FR 41181, July 8, 2004; 70 FR 24302, May 9, 2005]

### Subpart—Corn Cyst Nematode [Reserved]

### Subpart—European Larch Canker

SOURCE: 49 FR 18992, May 4, 1984, unless otherwise noted.

#### QUARANTINE AND REGULATIONS

#### § 301.91 Quarantine and regulations; restrictions on interstate movement of regulated articles.<sup>1</sup>

(a) *Quarantines and regulations.* The secretary of agriculture hereby quarantines the State of Maine in order to prevent the artificial spread of European larch canker, *Lachnellula willkommii* (Dasycypha), a dangerous

plant disease of trees of the *Larix* and *Pseudolarix* species not hereto fore widely prevalent or distributed within and throughout the United States; and hereby establishes regulations governing the interstate movement of regulated articles specified in § 301.91-2

(b) *Restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

[49 FR 18992, May 4, 1984, as amended at 66 FR 21053, Apr. 27, 2001]

#### § 301.91-1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

*Certificate.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such article is eligible for interstate movement in accordance with § 301.91-5(a).

*Compliance agreement.* A written agreement between Plant Protection and Quarantine and a person engaged in the business of growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

*Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service for Plant Protection and Quarantine, or any officer or employee of the Department to whom authority to act in his/her stead has been or may hereafter be delegated.

*European larch canker.* The plant disease known as European larch canker, *Lachnellula willkommii* (Dasycypha), in any stage of development.

*Infestation.* The presence of European larch canker or the existence of circumstances that make it reasonable to believe that the European larch canker is present.

*Inspector.* Any employee of Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

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person, authorized by the Deputy Administrator in accordance with law to enforce the provisions of the quarantines and regulations in this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document which is issued for a regulated article by an inspector or by a person operating under a compliance agreement, and which represents that such regulated article is eligible for interstate movement in accordance with § 301.91-5(b).

*Moved (movement, move).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved or caused to be moved by any means. "Movement" and "move" shall be construed accordingly.

*Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

*Plant Protection and Quarantine.* The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, delegated responsibility for enforcing provisions of the Plant Protection Act and related legislation, quarantines, and regulations.

*Regulated area.* Any State, or any portion thereof, listed in § 301.91-3(c) or otherwise designated as a regulated area in accordance with § 301.91-3(b).

*Regulated article.* Any article listed in § 301.91-2(a) or otherwise designated as a regulated article in accordance with § 301.91-2(b).

*State.* Each of the several States of the United States, the District of Columbia, Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States and all other Territories and Possessions of the United States.

[49 FR 18992, May 4, 1984, as amended at 66 FR 21053, Apr. 27, 2001]

### § 301.91-2 Regulated articles.

The following are regulated articles:

(a) Logs, pulpwood, branches, twigs, plants, scion and other propagative material of the *Larix* or *Pseudolarix* spp. except seeds;

(b) Any other product, article, or means of conveyance, of any character whatsoever, not covered by paragraph

(a) of this section, when it is determined by an inspector that it presents a risk of spread of European larch canker and the person in possession thereof has actual notice that the product, article or means of conveyance is subject to the restrictions in the quarantine and regulations.

### § 301.91-3 Regulated areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Deputy Administrator shall list as a regulated area in paragraph (c) of this section, the State, or any portion thereof, in which European larch canker has been found by an inspector or in which the Deputy Administrator has reason to believe that European larch canker is present, or any portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of its proximity to a European larch canker infestation or its inseparability for quarantine enforcement purpose from localities in which European larch canker occurs. Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator determines that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart; and

(2) The designation of less than the entire State as a regulated area will otherwise be adequate to prevent the artificial interstate spread of European larch canker.

(b) The Deputy Administrator or an inspector may temporarily designate any nonregulated area in a quarantined State as a regulated area in accordance with the criteria specified in paragraph (a) of this section for listing such area. Written notice of such designation shall be given to the owner or person in possession of such nonregulated area, and, thereafter, the interstate movement of any regulated article from such area shall be subject to the applicable provisions of this subpart. As soon as practicable, such area shall be added to the list in paragraph (c) of

this section or such designation shall be terminated by the Deputy Administrator or an inspector, and notice thereof shall be given to the owner or person in possession of the area.

(c) The areas described below are designated as regulated areas:

MAINE

*Hancock County.* The entire townships of Gouldsboro, Serrento, Sullivan, Winter Harbor, 7th Southern Division, 9th Southern Division, 10th Southern Division, and 16th Middle Division.

*Knox County.* The entire townships of Appleton, Camden, Cushing, Friendship, Hope, Owls Head, Rockland City, Rockport, South Thomaston, St. George, Thomaston, Union, Warren, and Washington.

*Lincoln County.* The entire townships of Alna, Boothbay Harbor, Bremen, Bristol, Damariscotta, Edgecomb, Jefferson, Newcastle, Nobleboro, Somerville, Southport, Waldoboro, Westport, and Wiscasset.

*Waldo County.* The entire townships of Lincolnville and Searsmont.

*Washington County.* The entire townships of Addison, Baring, Beals, Calais City, Centerville, Charolotte, Cherryfield, Columbia, Columbia Falls, Cooper, Cutler, Debolis, Dennysville, East Machias, Eastport, Edmunds, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion, Marshfield, Meddybemps, Milbridge, Northfield, Plantation 14, Pembroke, Perry, Robbinston, Roque Bluffs, Steuben, Trescott, Whiting, Whitneyville, 18th Eastern Division, 18th Middle Division, and 19th Middle Division.

[49 FR 18992, May 4, 1984, as amended at 49 FR 36817, Sept. 20, 1984; 50 FR 7033, Feb. 20, 1985; 50 FR 13178, Apr. 3, 1985]

**§ 301.91-4 Conditions governing the interstate movement of regulated articles from regulated areas in quarantined States.<sup>2</sup>**

Any regulated article may be moved interstate from any regulated area in a quarantined State only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.91-5 and 301.91-8 of this subpart; or

(b) Without a certificate or limited permit;

(1) If moved to a contiguous regulated area; or

<sup>2</sup>Requirements under all other applicable Federal domestic plant quarantines must also be met.

(2)(i) If moved directly through (moved without stopping except under normal traffic conditions such as traffic lights or stop signs) any regulated area in an enclosed vehicle or in an enclosed container on a vehicle to prevent the introduction of European larch canker;

(ii) If the article originated outside of any regulated area; and

(iii) If the point of origin of any article is clearly indicated by shipping documents and its identity has been maintained.

**§ 301.91-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate shall be issued by an inspector, except as provided in paragraph (c) of this section, for the movement of a regulated article if such inspector:

(1)(i) Determines based on inspection of the premises of origin that the premises are free from European larch canker; or

(ii) Determines that it has been grown, processed, stored, or handled in such a manner that the regulated article is free of European larch canker; and

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>3</sup> to prevent the spread of European larch canker; and

(3) Determines that it is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(b) A limited permit shall be issued by an inspector, except as provided in paragraph (c) of this section, for the movement of a regulated article if such inspector:

(1) Determines, in consultation with the Deputy Administrator, that it is to be moved to a specified destination for specified handling, utilization, or processing (such destination and other conditions to be specified on the limited

<sup>3</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

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permit), when, upon evaluation of all of the circumstances involved in each case, it is determined that such movement will not result in the spread of European larch canker because the disease will be destroyed by such specified handling, utilization, or processing;

(2) Determines that it is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>3</sup> to prevent the spread of European larch canker; and

(3) Determines that it is eligible for such movement under all other Federal domestic plant quarantines and regulations applicable to such article.

(c) Certificates and limited permits may be issued by any person engaged in the business of growing, handling, or moving regulated articles provided such person has entered into and is operating under a compliance agreement. Any such person may execute and issue a certificate or limited permit for the interstate movement of a regulated article if an inspector has previously made the determination that the article is eligible for a certificate in accordance with § 301.91-5(a) or is eligible for a limited permit in accordance with § 301.91-5(b).

(d) Any certificate or limited permit which has been issued or authorized may be withdrawn by an inspector if such inspector determines that the holder thereof has not complied with any conditions under the regulations for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict. Rules of Practice con-

cerning such a hearing will be adopted by the Deputy Administrator.

[49 FR 18992, May 4, 1984, as amended at 66 FR 21053, Apr. 27, 2001]

### § 301.91-6 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of regulated articles under this subpart.<sup>4</sup> The compliance agreement shall be a written agreement between a person engaged in such a business and Plant Protection and Quarantine, wherein the person agrees to comply with the provisions of this subpart and any conditions imposed pursuant thereto.

(b) Any compliance agreement may be cancelled orally or in writing by the inspector who is supervising its enforcement whenever the inspector finds that such person has failed to comply with the provisions of this subpart or any conditions imposed pursuant thereto. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances permit. Any person whose compliance agreement has been cancelled may appeal the decision, in writing, to the Deputy Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully cancelled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for such decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve

<sup>4</sup>Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236, and from local offices of the Plant Protection and Quarantine. (Local offices are listed in telephone directories).

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such conflict. Rules of Practice concerning such a hearing will be adopted by the Deputy Administrator.

[49 FR 18992, May 4, 1984, as amended at 59 FR 67609, Dec. 30, 1994]

### § 301.91-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.91-5(c)), who desires to move interstate a regulated article accompanied by a certificate or limited permit shall, as far in advance as possible (should be no less than 48 hours before the desired movement), request an inspector<sup>5</sup> to take any necessary action under this subpart prior to movement of the regulated article.

(b) Such articles shall be assembled at such point and in such manner as the inspector designates as necessary to comply with the requirements of this subpart.

[49 FR 18992, May 4, 1984, as amended at 59 FR 67609, Dec. 30, 1994]

### § 301.91-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during such movement, shall be securely attached to the outside of the containers containing the regulated article, securely attached to the article itself if not in a container, or securely attached to the consignee's copy of the accompanying waybill or other shipping document; *Provided, however*, That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill or other shipping documents only if the regulated article is sufficiently described on the certificate, limited permit, or shipping document to identify such article.

<sup>5</sup>Inspectors are assigned to local offices of Plant Protection and Quarantine which are listed in telephone directories. Information concerning such local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

(b) The certificate or limited permit for the movement of a regulated article shall be furnished by the carrier to the consignee at the destination of the shipment.

### § 301.91-9 Costs and charges.

The services of the inspector shall be furnished without cost, except as provided in 7 CFR part 354. The U.S. Department of Agriculture will not be responsible for any costs or charges incident to inspections or compliance with the provisions of the quarantine and regulations in this subpart, other than for the services of the inspector.

## Subpart—Phytophthora Ramorum

SOURCE: 67 FR 6834, Feb. 14, 2002, unless otherwise noted.

### § 301.92 Restrictions on the interstate movement of regulated and restricted articles.

No person may move interstate from any quarantined area any regulated or restricted article except in accordance with this subpart.<sup>1</sup>

### § 301.92-1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

*Bark chips.* Bark fragments broken or shredded from a log or tree.

*Certificate.* A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article meets the requirements of § 301.92-5(a) of this subject and may be moved interstate to any destination.

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated or restricted articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).



*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, processing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

*Departmental permit.* A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.92-4(a)(2) of this subpart.

*Duff.* Decaying plant matter that includes leaf litter, green waste, stem material, bark, and any other plant material that, upon visual inspection, does not appear to have completely decomposed into soil.

*Firewood.* Wood that has been cut, sawn, or chopped into a shape and size commonly used for fuel.

*Forest stock.* All flowers, trees, shrubs, vines, scions, buds, fruit pits, or other seeds of fruit and ornamental trees or shrubs that are wild-grown, backyard-grown, or naturally occurring and do not meet the definition of nursery stock, and that are not located on a nursery premises.

*Inspector.* Any employee of APHIS, the U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties required under this subpart.

*Interstate.* From any State into or through any other State.

*Log.* The bole of a tree; trimmed timber that has not been sawn further than to form cants.

*Lumber.* Logs that have been sawn into boards, planks, or structural members such as beams.

*Moved (move, movement).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Mulch.* Bark chips, wood chips, wood shavings, or sawdust, or a mixture thereof, that could be used as a protective or decorative ground cover.

*Nursery stock.* All greenhouse or field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other

plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Plant Protection and Quarantine.* Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.92-3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.92-3(b) of this subpart.

*Regulated article.* Any article listed in § 301.92-2(a) of this subpart.

*Restricted article.* Any article listed in § 301.92-2(b) of this subpart.

*Soil.* Any non-liquid combination of organic and/or inorganic material in which plants can grow.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

#### § 301.92-2 Regulated and restricted articles.

(a) The following are regulated articles, and may be moved interstate from a quarantined area only if accompanied by a certificate issued in accordance with the regulations in this subpart:

(1) Nursery stock (except acorns and seeds), unprocessed wood and wood products, and plant products, including firewood, logs, lumber, wreaths, garlands, and greenery of arrowwood (*Viburnum bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispidula*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*) (except fruit), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos manzanita*), rhododendron (*Rhododendron* spp., including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*).

(2) Soil.

(3) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum*, if an inspector notifies the person in possession of the product or article that it is subject to the restrictions in the regulations.

(b) The following are restricted articles, and may only be moved interstate from a quarantined area by the U.S. Department of Agriculture for experimental or scientific purposes, and only in accordance with the regulations in § 301.92-4(a)(2) of this subpart:

(1) Bark chips, forest stock, or mulch of arrowwood (*Viburnum × bodnantense*), big leaf maple (*Acer macrophyllum*), black oak (*Quercus kelloggii*), California bay laurel (*Umbellularia californica*), California buckeye (*Aesculus californica*), California coffeeberry (*Rhamnus californica*), California honeysuckle (*Lonicera hispidula*), coast live oak (*Quercus agrifolia*), huckleberry (*Vaccinium ovatum*), madrone (*Arbutus menziesii*), manzanita (*Arctostaphylos manzanita*), rhododendron (*Rhododendron* spp., including azalea), Shreve's oak (*Quercus parvula* var. *shrevei*), tanoak (*Lithocarpus densiflorus*), and Toyon (*Heteromeles arbutifolia*).

(2) Any other product or article that an inspector determines to present a risk of spreading *Phytophthora ramorum*, if an inspector notifies the person in possession of the product or article that it is a restricted article.

[67 FR 6834, Feb. 14, 2002; 67 FR 13560, Mar. 25, 2002]

#### § 301.92-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which *Phytophthora ramorum* has been found by an inspector, in which the Administrator has reason to believe that *Phytophthora ramorum* is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which *Phytophthora ramorum* has been found. Less than an entire State will be

designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of *Phytophthora ramorum*.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The following areas are designated as quarantined areas:

##### CALIFORNIA

*Alameda County.* The entire county.  
*Marin County.* The entire county.  
*Mendocino County.* The entire county.  
*Monterey County.* The entire county.  
*Napa County.* The entire county.  
*San Mateo County.* The entire county.  
*Santa Clara County.* The entire county.  
*Santa Cruz County.* The entire county.  
*Solano County.* The entire county.  
*Sonoma County.* The entire county.

##### OREGON

*Curry County.* That portion of the county bounded by a line drawn as follows: Beginning in the northwest corner of sec. 17, T. 40 S., R. 13 W., then east along sec. 17 and 16, T. 40 S., R. 13 W., to sec. 16, T. 40 S., R. 13 W., then south along sec. 16, 21, 28, and 33, T. 40 S., R. 13 W., to sec. 33, T. 40 S., R. 13 W., then west along sec. 33 and 32, T. 40 S., R. 13 W., to sec. 32, T. 40 S., R. 13 W., then north along sec. 32 and 29, T. 40 S., R. 13 W., to the midway point of the western boundary of sec. 29,

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T. 40 S., R. 13 W., then west to the center of sec. 30, T. 40 S., R. 13 W., then north through sec. 30 and 19, T. 40 S., R. 13 W., to the center of sec. 19, T. 40 S., R. 13 W., then east to the western boundary of sec. 20, T. 40 S., R. 13 W., then north along sec. 20 and 17, T. 40 S., R. 13 W., to the point of beginning.

#### § 301.92-4 Conditions governing the interstate movement of regulated and restricted articles from quarantined areas.

Regulated articles and restricted articles may be moved interstate from a quarantined area<sup>2</sup> only if moved in accordance with this section.

(a) *With a certificate or departmental permit.* (1) Any regulated articles may be moved interstate from a quarantined area if accompanied by a certificate issued and attached in accordance with §§ 301.92-5 and 301.92-8 of this subpart, and provided that the regulated article is moved through the quarantined area without stopping except for refueling, rest stops, emergency repairs, and for traffic conditions, such as traffic lights or stop signs.

(2) Any restricted article may be moved interstate from a quarantined area only if the article is moved:

(i) By the United States Department of Agriculture for experimental or scientific purposes;

(ii) Pursuant to a departmental permit issued by the Administrator for the article;

(iii) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of *Phytophthora ramorum*; and

(iv) With a tag or label bearing the number of the departmental permit issued for the article attached to the outside of the container holding the article, or attached to the article itself if not in a container.

(b) *Without a certificate or departmental permit.* (1) The regulated or restricted article originated outside the quarantined area and the point of origin of the article is indicated on the waybill of the vehicle transporting the article; and

(2) The regulated or restricted article is moved from outside the quarantined area through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs, and the article is not unpacked or unloaded in the quarantined area.

(Approved by the Office of Management and Budget under control number 0579-0191)

#### § 301.92-5 Issuance and cancellation of certificates.

(a) An inspector<sup>3</sup> may issue a certificate for the interstate movement of regulated articles if an inspector determines that:

(1)(i) The regulated articles have been treated under the direction of an inspector in accordance with § 301.92-10 of this subpart; or

(ii) The regulated articles are wood products such as firewood, logs, or lumber that are free of bark; or

(iii) The regulated article is soil that has not been in direct physical contact with any article infected with *P. ramorum*, and from which all duff has been removed.

(iv) The regulated articles are articles of nursery stock that:

(A) Are shipped from a nursery or premises in a quarantined area that is inspected annually in accordance with the inspection and sampling protocol described in § 301.92-11(a) of this subpart, and that has been found free of *Phytophthora ramorum*; and

(B) Are part of a shipment of nursery stock that has been inspected prior to interstate movement in accordance with § 301.92-11(b) of this subpart, and that has been found free of *Phytophthora ramorum*; and

(C) Have been kept separate from regulated articles not inspected between the time of the inspection and the time of interstate movement; and

<sup>3</sup>Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale MD 20737-1236, or the APHIS web site at <http://www.aphis.usda.gov/travel/aqi.html>.

<sup>2</sup>Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(D) Have not been grown in, or moved from, other areas within a quarantined area except nurseries or premises that are annually inspected for *Phytophthora ramorum* in accordance with this section, and that have been found free of *Phytophthora ramorum*.

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>4</sup> to prevent the spread of *Phytophthora ramorum*; and

(3) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) Certificates may be issued by any person engaged in the business of growing, processing, handling, or moving regulated articles provided such person has entered into and is operating under a compliance agreement. Any such person may execute and issue a certificate for the interstate movement of regulated articles if an inspector has previously made the determination that the article is eligible for a certificate in accordance with § 301.92-5(a) of this subpart.

(c) Any certificate that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate has not complied with all conditions in this subpart for the use of the certificate. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The

appeal must state all of the facts and reasons upon which the person relies to show that the certificate was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0191)

#### **§ 301.92-6 Compliance agreements and cancellation.**

(a) Any person engaged in growing, processing, handling, or moving regulated articles other than nursery stock may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.<sup>5</sup>

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice

<sup>4</sup>Sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754) provide that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

<sup>5</sup>Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

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concerning a hearing will be adopted by the Administrator.

### § 301.92-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates under § 301.92-5(b) of this subpart) who desires to move a regulated article interstate accompanied by a certificate must notify an inspector<sup>6</sup> as far in advance of the desired interstate movement as possible, but no less than 14 days before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

### § 301.92-8 Attachment and disposition of certificates.

(a) A certificate required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate and on the waybill to identify the regulated article.

(b) The certificate for the interstate movement of a regulated article must be furnished by the carrier to the consignee listed on the certificate upon arrival at the location provided on the certificate.

(Approved by the Office of Management and Budget under control number 0579-0191)

### § 301.92-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

<sup>6</sup>See footnote 3 of this subpart.

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### § 301.92-10 Treatments.

Treatment schedules listed in part 305 of this chapter to destroy *Phytophthora ramorum* are authorized for use on certain regulated articles. The following treatments also may be used for the regulated articles indicated:

(a) *Soil*—Heat to a temperature of at least 180 °F for 30 minutes in the presence of an inspector.

(b) *Wreaths, garlands, and greenery of host material*—Dip for 1 hour in water that is held at a temperature of at least 160 °F.

[70 FR 36331, June 23, 2005]

### § 301.92-11 Inspection and sampling protocol.

(a) *Annual nursery inspection and sampling.* To meet the requirements of § 301.92-5(a)(1)(iv) of this subpart, nurseries that ship regulated articles of nursery stock interstate must be inspected for symptoms of *Phytophthora ramorum* annually in accordance with this section.

(1) If the nursery contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If the nursery contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the nursery that exceeds 100. The regulated articles to be inspected will be randomly selected from throughout the nursery.

(2) If symptomatic plants are found upon inspection, the inspector must collect at least one sample per symptomatic plant.

(3) If fewer than 40 symptomatic plants are found in a nursery during an annual inspection, the inspector must collect samples from nonsymptomatic regulated articles of nursery stock so that the total number of sampled plants is at least 40.

(4) Samples must be labeled and sent for testing to a laboratory approved by APHIS.

(5) If any regulated articles within a nursery are found to be infected with *Phytophthora ramorum*, the nursery will be prohibited from moving regulated articles interstate until such time as an inspector can determine that the

nursery is free of *Phytophthora ramorum*.

(b) *Inspection and sampling of individual shipments.* To meet the requirements of § 301.92-5(a)(1)(iv) of this subpart, each shipment of regulated articles of nursery stock intended for interstate movement must be inspected for symptoms of *Phytophthora ramorum* in accordance with this section.

(1) If a shipment contains 100 or fewer regulated articles, an inspector will inspect each regulated article. If a shipment contains more than 100 regulated articles, an inspector will inspect 100 regulated articles and at least 2 percent of the number of regulated articles contained in the shipment that exceeds 100. The regulated articles to be inspected will be randomly selected.

(2) If symptomatic plants are found upon inspection, the inspector will collect at least one sample per symptomatic plant, and one sample per regulated article of nursery stock that is in close proximity to, or that has had physical contact with a symptomatic plant.

(3) Samples will be labeled and sent for testing to a laboratory approved by APHIS, and must be found free of *Phytophthora ramorum* prior to the interstate movement of any regulated articles contained in the shipment.

(4) If any plants intended for interstate movement are found to be infected with *Phytophthora ramorum*, the nursery from which they originate will be prohibited from moving regulated articles interstate until such as time as an inspector can determine that the nursery is free of *Phytophthora ramorum*.

### Subpart—Oriental Fruit Fly

SOURCE: 58 FR 8521, Feb. 16, 1993, unless otherwise noted.

#### § 301.93 Restrictions on interstate movement of regulated articles.

No person shall move interstate from any quarantined area any regulated ar-

ticle except in accordance with this subpart.<sup>1</sup>

[58 FR 8521, Feb. 16, 1993, as amended at 66 FR 21053, Apr. 27, 2001]

#### § 301.93-1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service of the United States Department of Agriculture (APHIS or Service).

*Certificate.* A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of Oriental fruit fly and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between the Animal and Plant Health Inspection Service and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with the provisions of this subpart.

*Core area.* The area within a circle surrounding each detection using a 1/2-mile radius with the detection as a center point.

*Day degrees.* A unit of measurement used to measure the amount of heat required to further the development of fruit flies through their life cycle. Day-degree life cycle requirements are calculated through a modeling process specific for each fruit fly species.

*Drip area.* The area under the canopy of a plant.

*Infestation.* The presence of the Oriental fruit fly or the existence of circumstances that make it reasonable to believe that the Oriental fruit fly is present.

*Inspector.* Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance, and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

## § 301.93-2

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*Interstate.* From any State into or through any other State.

*Limited permit.* A document, in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is eligible for interstate movement in accordance with § 301.93-5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

*Moved (Move, Movement).* Shipped, offered for shipment, received for transportation or transported, carried, or allowed to be moved, shipped, transported, or carried by any means.

*Oriental fruit fly.* The insect known as Oriental fruit fly (*Bactrocera dorsalis* (Hendel)) in any stage of development.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.93-3(c) of this subpart.

*Regulated article.* Any article listed in § 301.93-2 of this subpart or otherwise designated as a regulated article in accordance with § 301.93-2(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.93-3(b) of this subpart.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory or possession of the United States.

[58 FR 8521, Feb. 16, 1993; 58 FR 29028, May 18, 1993, as amended at 71 FR 66832, Nov. 17, 2006]

### § 301.93-2 Regulated articles.

The following are regulated articles:

(a) The following fruits, nuts, vegetables, and berries:

Akia (*Wikstromeia phyllyraefolia*)  
 Alexander laurel (*Calophyllum inophyllum*)  
 Apple (*Malus sylvestris*)  
 Apricot (*Prunus armeniaca*)  
 Avocado (*Persea americana*)  
 Banana (*Musa paradisiaca* var. *sapientum*) (*Musaxparadisiaca*)  
 Banana, dwarf (*Musa nana*)  
 Barbados cherry (*Malpighia glabra*)  
 Bell pepper (*Capsicum annum*)  
 Brazil cherry (*Eugenia dombeyi*)  
 Breadfruit (*Artocarpus altilis*)  
 Cactus (*Cereus coarulescens*)  
 Caimitillo (*Chrysophyllum oliviforme*)  
 Cashew (*Anacardium occidentale*)  
 Cherimoya (*Annona Cherimola*)  
 Cherry, Catalina (*Prunus ilicifolia*)

Cherry, Portuguese (*P. lusitanica*)  
 Chile (*Capsicum annum*)  
 Coffee, Arabian (*Coffea arabica*)  
 Country gooseberry (*Averrhoa carambola*)  
 Cucumber (*Cucumis sativas*)  
 Custard apple (*Annona reticulata*)  
 Date palm (*Phoenix dactylifera*)  
 Dragon tree (*Dracena draco*)  
 Eggfruit tree (*Pouteria campechiana*)  
 Elengi tree (*Mimusops elengi*)  
 Fig (*Ficus carica*)  
 Gourka (*Garcinia celebica*)  
 Granadilla, sweet (*Passiflora ligularis*)  
 Grape (*Vitis* spp.)  
 Grapefruit (*Citrus paradisi*)  
 Guava (*Psidium guajava*), (*P. littorale*), (*P. cattleianum*)  
 Imbu (*Spondias tuberosa*)  
 Jackfruit (*Artocarpus heterophyllus*)  
 Jerusalem cherry (*Solanum pseudocapsicum*)  
 Jujube (*Ziziphus* spp.)  
 Kitembilla (*Dovyalis hebecarpa*)  
 Kumquat (*Fortunella japonica*)  
 Laurel (*Calophyllum inophyllum*)  
 Lemon (*Citrus limon*)  
 Lime, key or Mexican (*Citrus aurantifolia*)  
 Lime, Persian (*Citrus latifolia*)  
 Lime, sweet (*Citrus limetioides*)  
 Longan (*Euphoria longan*)  
 Loquat (*Eriobotrya japonica*)  
 Lychee nut (*Lychee chinensis*)  
 Malay apple (*Eugenia malaccensis*)  
 Mammee apple (*Mammea americana*)  
 Mandarin orange (*Citrus reticulata*) (*tangerine*)  
 Mango (*Mangifera indica*)  
 Mangosteen (*Garcinia mangostana*)  
 Mock orange (*Murraya exotica*)  
 Mulberry (*Morus nigra*)  
 Myrtle, downy rose (*Rhodomyrtus tomentosa*)  
 Natal plum (*Crissa grandiflora*)  
 Nectarine (*Prunus persica* var. *nectarina*)  
 Oleander, yellow (*Thevetia peruviana*)  
 Orange, calamondin (*Citrus reticulata* x. *fortunella*)  
 Orange, Chinese (*Fortunella japonica*)  
 Orange, king (*Citrus reticulata* x. *C. sinensis*)  
 Orange, sweet (*Citrus sinensis*)  
 Orange, Unshu (*Citrus reticulata* var. *Unshu*)  
 Oriental bush red pepper (*Capsicum frutescens abbreviatum*)  
 Otaheite apple (*Spondias dulcis*)  
 Palm, syrup (*Jubaea spectabilis*)  
 Papaya (*Carica papaya*)  
 Passionflower (*Passiflora edulis*)  
 Passionflower, softleaf (*Passiflora mollissima*)  
 Passionfruit (*Passiflora edulis*) (yellow lilikoï)  
 Peach (*Prunus persica*)  
 Pear (*Pyrus communis*)  
 Pepino (*Solanum muricatum*)  
 Pepper, sweet (*Capsicum frutescens* var. *grossum*)  
 Persimmon, Japanese (*Diospyros kaki*)  
 Pineapple guava (*Feijoa sellowiana*)

Plum (*Prunus americana*)  
 Pomegranate (*Punica granatum*)  
 Prickly pear (*Opuntia megacantha*)  
 (*Opuntia ficus indica*)  
 Prune (*Prunus domestica*)  
 Pummelo (*Citrus grandis*)  
 Quince (*Cydonia oblonga*)  
 Rose apple (*Eugenia jambos*)  
 Sandalwood (*Santalum paniculatum*)  
 Sandalwood, white (*Santalum album*)  
 Santol (*Sandericum koetjape*)  
 Sapodilla (*Manilkara zapota*)  
 Sapodilla, chiku (*Manilkara zapota*)  
 Sapota, white (*Casimiroa edulis*)  
 Seagrape (*Coccoloba uvifera*)  
 Sour orange (*Citrus aurantium*)  
 Soursop (*Annona muricata*)  
 Star apple (*Chrysophyllum cainito*)  
 Surinam cherry (*Eugenia uniflora*)  
 Tomato (*Lycopersicon esculentum*)  
 Tropical almond (*Terminalia catappa*)  
 (*Terminalia chebula*)  
 Velvet apple (*Diospyros discolor*)  
 Walnut (*Juglans hindsii*)  
 Walnut, English (*Juglans regia*)  
 Wampi (*Citrus lansium*)  
 West Indian cherry (*Malpighia puniceifolia*)  
 Ylang-Ylang (*Cananga odorata*)

Any fruits, nuts, vegetables, or berries that are canned or dried or frozen below -17.8 °C. (0 °F.) are not regulated articles.

(b) Soil within the drip area of plants that are producing or have produced the fruits, nuts, vegetables, or berries listed in paragraph (a) of this section.

(c) Any other product, article, or means of conveyance not covered by paragraph (a) or (b) of this section that an inspector determines presents a risk of spread of the Oriental fruit fly and notifies the person in possession of it that the product, article, or means of conveyance is subject to the restrictions of this subpart.

[58 FR 8521, Feb. 16, 1993; 58 FR 29028, May 18, 1993, as amended at 71 FR 66832, Nov. 17, 2006]

#### § 301.93-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the Oriental fruit fly has been found by an inspector, in which the Administrator has reason to believe that the Oriental fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Oriental fruit fly or its inseparability for quarantine enforcement

purposes from localities in which the Oriental fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the Oriental fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with the criteria specified in paragraph (a) of this section for listing quarantined areas. The Administrator will give written notice of this temporary designation to the owner or person in possession of the nonquarantined area; thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area is subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas:

##### California

*San Bernardino County.* That portion of San Bernardino County in the Rialto area bounded by a line as follows: Beginning at the intersection of State Highway 201 and East Avenue; then north on East Avenue to Banyan Street; then east, northeast, north, and northeast on Banyan Street to Wardman Bullock Road; then north and northwest on Wardman Bullock Road to Colonero Road; then north along an imaginary line from the intersection of Wardman Bullock Road and Colonero Road to its intersection with the southern boundary line of the San Bernardino National Forest; then east,



northeast, northwest, southeast, east, southeast, northeast, north, northeast, and east along the southern boundary line of the San Bernardino National Forest to its intersection with U.S. Interstate 15; then northeast on U.S. Interstate 15 to its next intersection with the San Bernardino National Forest boundary line; then northwest, north, northeast, southeast, east, northeast, southeast, and east along the San Bernardino National Forest boundary line to its intersection with Palm Avenue; then southwest on Palm Avenue to U.S. Interstate 215; then southeast on U.S. Interstate 215 to University Parkway; then southwest on University Parkway to N. State Street; then south on N. State Street to State Highway 210; then west on State Highway 210 to the Southern Pacific railroad track; then south, southwest, south, and southeast along the Southern Pacific railroad track to its intersection with W. Base Line Street; then west on W. Base Line Street to N. Pepper Avenue; then south on N. Pepper Avenue to State Highway 66; then west on State Highway 66 to N. Cactus Avenue; then south on N. Cactus Avenue to W. Rialto Avenue; then west on W. Rialto Avenue to W. Arrow Boulevard; then west on W. Arrow Boulevard to Arrow Boulevard; then west on Arrow Boulevard to Cherry Avenue; then north on Cherry Avenue to State Highway 66; then west on State Highway 66 to East Avenue; then north on East Avenue to the point of beginning.

[58 FR 8521, Feb. 16, 1993, as amended at 60 FR 18728, Apr. 3, 1995; 62 FR 45142, Aug. 26, 1997; 62 FR 47552, Sept. 10, 1997; 62 FR 53225, Oct. 14, 1997; 63 FR 16878, Apr. 7, 1998; 64 FR 31964, June 15, 1999; 64 FR 52214, Sept. 28, 1999; 64 FR 55812, Oct. 15, 1999; 65 FR 26488, May 8, 2000; 66 FR 46366, Sept. 5, 2001; 69 FR 56159, Sept. 20, 2004; 69 FR 67042, Nov. 16, 2004; 70 FR 10862, Mar. 7, 2005; 70 FR 11112, Mar. 8, 2005; 71 FR 66832, Nov. 17, 2006]

**§ 301.93-4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

Any regulated article may be moved interstate from a quarantined area

only if moved under the following conditions:<sup>2</sup>

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.93-5 and 301.93-8 of this subpart;

(b) Without a certificate or limited permit, if:

(1) The regulated article originated outside of any quarantined area and is moved directly through (without stopping except for refueling, or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by Oriental fruit flies (such as canvas, plastic, or closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(c) Without a certificate or limited permit, if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the permit and found by the Administrator to be adequate to prevent the spread of Oriental fruit fly; and

(4) With a tag or label bearing the number of the permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579-0088)

**§ 301.93-5 Issuance and cancellation of certificates and limited permits.**

(a) An inspector<sup>3</sup> will issue a certificate for the interstate movement of a

<sup>2</sup>Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

<sup>3</sup>Inspectors are assigned to local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories. Information concerning these offices

regulated article if the inspector determines that:

(1) (i) The regulated article has been treated in accordance with § 301.93-10 of this subpart; or

(ii) Based on inspection of the premises of origin, or treatment of the premises of origin in accordance with § 301.93-10(c) of this subpart, the premises are free from Oriental fruit flies and the regulated article has not been exposed to Oriental fruit fly; or

(iii) Based on inspection of the regulated article, it is free of Oriental fruit fly; and

(2) The regulated article is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>4</sup> to prevent the spread of the Oriental fruit fly; and

(3) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, utilization, or processing (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the Oriental fruit fly because life stages of the Oriental fruit fly will be destroyed by the specified handling, utilization, or processing.

(2) The regulated article is to be moved interstate in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>4</sup> to prevent the spread of the Oriental fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for use for interstate movement of regulated articles may be issued by an inspector or person engaged in growing, handling, or moving regulated articles provided the person is operating under a compliance agreement. A person operating under a compliance agreement may execute a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is otherwise eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may execute a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn by an inspector orally or in writing, if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions under this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a

may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236.

<sup>4</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

## § 301.93-6

hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[58 FR 8521, Feb. 16, 1993, as amended at 59 FR 67609, Dec. 30, 1994; 66 FR 21053, Apr. 27, 2001]

### § 301.93-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the interstate movement of regulated articles under this subpart.<sup>5</sup>

(b) Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing shall be adopted by the Administrator.

[58 FR 8521, Feb. 16, 1993, as amended at 59 FR 67609, Dec. 30, 1994]

### § 301.93-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or lim-

<sup>5</sup>Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Domestic and Emergency Operations, 4700 River Road Unit 134, Riverdale, Maryland 20737-1236, and from local offices of the Animal and Plant Health Inspection Service, which are listed in telephone directories.

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ited permits under § 301.93-5(c)), who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector<sup>6</sup> as far in advance of the desired interstate movement as possible (but no less than 48 hours before the desired interstate movement).

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

### § 301.93-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article, at all times during the interstate movement, must be attached to the outside of the container containing the regulated article, attached to the regulated article itself if not in a container, or attached to the consignee's copy of the accompanying waybill: *Provided however*, That the requirements of this section may be met by attaching the certificate or limited permit to the consignee's copy of the waybill only if the regulated article is sufficiently described on the certificate, limited permit, or waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579-0088)

### § 301.93-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside of normal business hours.

### § 301.93-10 Treatments.

Treatment schedules listed in part 305 of this chapter to destroy the Oriental fruit fly are approved for use on

<sup>6</sup>See footnote 3 at § 301.93-5(a).

regulated articles. The following treatments can be used for bell pepper, citrus and grape, tomato, premises, and soil:

(a) *Fruits and vegetables*<sup>7</sup>—(1) *Bell Pepper*—(i) *Vapor Heat*. Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of bell pepper reaches 44.4 °C (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¼ hours, then immediately cool.

(2) *Citrus and grapes*—(i) *Fumigation plus refrigeration*. Fumigate at normal atmospheric pressure (chamber or tarpaulin, load not to exceed 80%) with 32 g/m<sup>3</sup> methyl bromide at 21 °C. (70 °F.) or above, minimum gas concentrations 25 g/m<sup>3</sup> at ½ hour, 18 g/m<sup>3</sup> at 2 or 2½ hours, 17 g/m<sup>3</sup> at 3 hours. Fumigate for a minimum of 2 hours. Then, aerate fruit at least 2 hours before refrigeration (but begin refrigeration no more than 24 hours after fumigation is completed). Refrigerate based upon fumigation exposure time listed in the table below:

Fumigation exposure time	Refrigeration	
	Days	Temperature
2 hours .....	4	0.55–2.7 °C. (33–37 °F.)
	11	3.33–8.3 °C. (38–47 °F.)
2½ hours .....	4	1.11–4.44 °C. (34–40 °F.)
	6	5.0–8.33 °C. (41–47 °F.)
	10	8.88–13.33 °C. (48–56 °F.)
3 hours .....	3	6.11–8.33 °C. (43–47 °F.)
	6	9.88–13.33 °C. (48–56 °F.)

(ii) *Refrigeration plus fumigation*. Refrigerate for 21 days at 0.55 °C. (33 °F.) or below, then fumigate at normal atmospheric pressure (chamber or tarpaulin, load not to exceed 80%) with—

(A) 48 g/m<sup>3</sup> (3 lb/1000 ft<sup>3</sup>) methyl bromide for 2 hours at 4.5 °C. (40–59 °F.), minimum gas concentration 44 g/m<sup>3</sup> at ½ hour, 36 g/m<sup>3</sup> at 2 hours; or

(B) 40 g/m<sup>3</sup> (2½ lb/1000 ft<sup>3</sup>) methyl bromide for 2 hours at 15.5–20.5 °C. (60–69 °F.), minimum gas concentration 36 g/m<sup>3</sup> at ½ hour, 28 g/m<sup>3</sup> at 2 hours; or

(C) 32 g/m<sup>3</sup> (2 lb/1000 ft<sup>3</sup>) methyl bromide for 2 hours at 21–26 °C. (70–79 °F.), minimum gas concentration 30 g/m<sup>3</sup> at ½ hour, 25 g/m<sup>3</sup> at 2 hours.

<sup>7</sup>Some varieties of fruit may be injured by approved treatments. The USDA is not liable for damages caused by this quarantine. Commodities should be tested by the shipper to determine each commodity's tolerance before commercial shipments are attempted.

(3) *Tomato*—(i) *Fumigation*. Fumigate with methyl bromide at normal atmospheric pressure (chamber or tarpaulin, load not to exceed 80%) with 32g/m<sup>3</sup> (2 lb/1000 ft<sup>3</sup>) for 3½ hours at 21 °C. (70 °F.) or above, minimum gas concentration 26 g/m<sup>3</sup> at ½ hour, 14 g/m<sup>3</sup> at 4 hours.

(ii) *Vapor heat*. Heat by saturated water vapor at 44.4 °C. (112 °F.) until approximate center of tomato reaches 44.4 °C. (112 °F.). Maintain at 44.4 °C. (112 °F.) for 8¼ hours, then immediately cool.

(b) *Premises*. A field, grove, or area that is located within the quarantined area but outside the infested core area, and that produces regulated articles, must receive regular treatments with either malathion or spinosad bait spray. These treatments must take place at 6-to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for completion of egg and larvae development of the Oriental fruit fly. Determination of the time period must be based on the day degrees model for the Oriental fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

(c) *Soil*. Soil within the drip area of plants which are producing or have produced the fruits, nuts, vegetables, and berries listed in §301.93-2(a) of this subpart: Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the drip area with sufficient water to wet the soil to at least a depth of ½ inch. Both immersion and pour-on treatment procedures are also acceptable.

[58 FR 8521, Feb. 16, 1993; 58 FR 29028, May 18, 1993; 67 FR 8465, Feb. 25, 2002; 69 FR 56159, Sept. 20, 2004; 70 FR 33268, June 7, 2005]

### Subpart—Melon Fruit Fly

SOURCE: 65 FR 8636, Feb. 22, 2000, unless otherwise noted.

#### § 301.97 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.<sup>1</sup>

[65 FR 8636, Feb. 22, 2000, as amended at 66 FR 21053, Apr. 27, 2001]

#### § 301.97–1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

*Certificate.* A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of melon fruit fly and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

*Departmental permit.* A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.97–4(d) of this subpart.

*Dripline.* The line around the canopy of a plant.

*Infestation.* The presence of the melon fruit fly or the existence of circumstances that makes it reasonable

to believe that the melon fruit fly is present.

*Inspector.* Any employee of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person authorized by the Administrator to enforce this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.97–5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

*Melon fruit fly.* The insect known as the melon fruit fly, *Bactrocera cucurbitae* (Coquillett), in any stage of development.

*Moved (move, movement).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Plant Protection and Quarantine.* Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.97–3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.97–3(b) of this subpart.

*Regulated article.* Any article listed in § 301.97–2 or otherwise designated as a regulated article in accordance with § 301.97–2(e).

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

#### § 301.97–2 Regulated articles.

The following are regulated articles:

- (a) Melon fruit flies.<sup>2</sup>
- (b) The following fruits and vegetables:

<sup>2</sup>Permit and other requirements for the interstate movement of melon fruit flies are contained in part 330 of this chapter.

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

Apple (*Malus sylvestris*)  
 Apple, custard (*Annona reticulata*)  
 Avocado (*Persea americana*)  
 Bean, hyacinth (*Dolichos lablab*)  
 Bean, lima (*Phaseolus lunatus* = *Phaseolus limensis*)  
 Bean, mung (*Phaseolus vulgaris*)  
 Cantaloupe (*Cucumis melo* and *Cucumis melo* var. *Cantalupensis*)  
 Cauliflower (*Brassica oleracea* var. *botrytis*)  
 Chayote (*Sechium edule*)  
 Colocynth (*Citrullus colocynthis*)  
 Cowpea (*Vigna unguiculata*)  
 Cucumber (*Cucumis sativus*)  
 Cucumber, bur (*Sicyos* sp.)  
 Cucurbit (*Cucumis pubescens* and *Cucumis trigonus*)  
 Date palm (*Phoenix dactylifera*)  
 Eggplant (*Solanum melongena*)  
 Fig (*Ficus carica*)  
 Gourds  
     (*Coccinia* spp.)  
     (*Crescentia* spp.)  
     (*Lagenaria* spp.)  
     (*Luffa* spp.)  
     (*Momordica* spp.)  
     (*Trichosanthis* spp.)  
 Grape (*Vitis trifolia*)  
 Guava (*Psidium guajava*)  
 Guava, cattley (*Psidium cattleianum*)  
 Lemon, water (*Passiflora laurifolia*)  
 Mango (*Mangifera indica*)  
 Melon (*Citrullus* spp.)  
 Melon, Chinese (*Benincasa hispida*)  
 Melon, oriental pickling (*Cucumis melo* var. *conomon*)  
 Mustard, leaf (*Brassica juncea*)  
 Okra (*Hibiscus esculentus*)  
 Orange, king (*Citrus nobilis*)  
 Orange, mandarin (*Citrus reticulata*)  
 Orange, sweet (*Citrus sinensis*)  
 Papaya (*Carica papaya*)  
 Passion fruit (*Passiflora edulis*)  
 Peach (*Prunus persica*)  
 Pear (*Pyrus communis*)  
 Pepper (*Capsicum annum*)  
 Pepper, chile (*Capsicum annum*)  
 Pepper, tobasco (*Capsicum frutescens*)  
 Pumpkin (*Cucurbita pepo*)  
 Pumpkin, Canada (*Cucurbita moschata*)  
 Scarlet wisteria tree (*Sesbania grandiflora*)  
 Soursop (*Annona muricata*)  
 Squash (*Cucurbita maxima*)  
 Tomato (*Lycopersicon esculentum*)  
 Tomato, tree (*Cyphomandra betaceae*)  
 Watermelon (*Citrullus lanatus* = *Citrullus vulgaris*)

Any fruits or vegetables that are canned or dried or frozen below -17.8 °C. (0 °F.) are not regulated articles.

(c) Soil within the dripline of plants that are producing or have produced the fruits or vegetables listed in paragraph (b) of this section.

(d) Plants of the following species in the family Cucurbitaceae:

Cantaloupe (*Cucumis melo*)  
 Chayote (*Sechium edule*)  
 Colocynth (*Citrullus colocynthis*)  
 Cucumber (*Cucumis sativus*)  
 Cucumber, bur (*Sicyos* sp.)  
 Cucurbit, wild (*Cucumis trigonus*)  
 Gherkin, West India (*Cucumis angaria*)  
 Gourd, angled luffa (*Luffa acutangula*)  
 Gourd, balsam apple (*Momordica balsamina*)  
 Gourd, ivy (*Coccinia grandis*)  
 Gourd, kakari (*Momordica dioica*)  
 Gourd, serpent cucumber (*Trichosanthis anguina*)  
 Gourd, snake (*Trichosanthis cucumeroides*)  
 Gourd, sponge (*Luffa aegyptiaca*)  
 Gourd, white flowered (*Lagenaria siceraria*)  
 Melon, Chinese (*Benincasa hispida*)  
 Melon, long (*Cucumis utilissimus*)  
 Pumpkin (*Cucurbita pepo*)  
 Pumpkin, Canada (*Cucurbita moschata*)  
 Squash (*Cucurbita maxima*)  
 Watermelon (*Citrullus lanatus* = *Citrullus vulgaris*)

(e) Any other product, article, or means of conveyance not listed in paragraphs (a) through (d) of this section that an inspector determines presents a risk of spreading the melon fruit fly, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

#### § 301.97-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the melon fruit fly has been found by an inspector, in which the Administrator has reason to believe that the melon fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the melon fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will

prevent the interstate spread of the melon fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the melon fruit fly.

[65 FR 8636, Feb. 22, 2000, as amended at 65 FR 39780, June 28, 2000]

**§ 301.97-4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

Any regulated article may be moved interstate from a quarantined area<sup>3</sup> only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.97-5 and 301.97-8 of this subpart;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by melon fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

<sup>3</sup>Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(2) The point of origin of the regulated article is indicated on the waybill.

(c) Without a certificate or limited permit if:

(1) The regulated article originated outside any quarantined area and is moved through (without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs) the quarantined area in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by melon fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area.

(d) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of the melon fruit fly; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579-0088)

**§ 301.97-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate may be issued by an inspector<sup>4</sup> for the interstate movement

<sup>4</sup>Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and

of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.97-10 of this subpart; or

(ii) Based on inspection of the premises of origin, the premises are free from the melon fruit fly; or

(iii) Based on inspection of the regulated article, the regulated article is free of melon fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the melon fruit fly; and

(3) The regulated article is to be moved in compliance with any additional conditions deemed necessary under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>5</sup> to prevent spread of the melon fruit fly; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector<sup>6</sup> will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the melon fruit fly because life stages of the melon fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to

prevent the spread of the melon fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0088)

[65 FR 8636, Feb. 22, 2000, as amended at 66 FR 21053, Apr. 27, 2001]

Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236.

<sup>5</sup>An inspector may hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of plants, plant pests, or other articles in accordance with sections 414, 421, and 434 of the Plant Protection Act (7 U.S.C. 7714, 7731, and 7754).

<sup>6</sup>See footnote 4 to § 301.97-5(a).



## § 301.97-6

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### § 301.97-6 Compliance agreements and cancellation.

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart and agrees to comply with its provisions.<sup>7</sup>

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

### § 301.97-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.97-5(c)) who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector<sup>8</sup> as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner

the inspector designates as necessary to comply with this subpart.

### § 301.97-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article, or

(2) Attached to the regulated article itself if not in a container, or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article.

(Approved by the Office of Management and Budget under control number 0579-0088)

### § 301.97-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

### § 301.97-10 Treatments.

Treatment schedules listed in part 305 of this chapter to destroy the melon fruit fly are authorized for use on regulated articles. The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.97-2(a) of this subpart.* Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of ½ inch.

<sup>7</sup>Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

<sup>8</sup>See footnote 4 to § 301.97-5(a).

(b) [Reserved]

[65 FR 8636, Feb. 22, 2000, as amended at 67 FR 8465, Feb. 25, 2002; 70 FR 33268, June 7, 2005]

### Subpart—West Indian Fruit Fly

SOURCE: 66 FR 6433, Jan. 22, 2001, unless otherwise noted.

#### § 301.98 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.<sup>1</sup>

#### § 301.98-1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

*Certificate.* A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of West Indian fruit fly and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

*Core area.* The 1-square-mile area surrounding each property where West Indian fruit fly has been detected.

*Day degrees.* A mathematical construct combining average temperature over time that is used to calculate the length of a West Indian fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F: (Minimum

Daily Temp+ Maximum Daily Temp)/2) – 59°=Day Degrees.

*Departmental permit.* A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.98-4(c) of this subpart.

*Dripline.* The line around the canopy of a plant.

*Infestation.* The presence of the West Indian fruit fly or the existence of circumstances that makes it reasonable to believe that the West Indian fruit fly is present.

*Inspector.* Any employee of the APHIS, U.S. Department of Agriculture, or other person authorized by the Administrator to perform the duties required under this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.98-5(b) of this subpart only to a specified destination and only in accordance with specified conditions.

*Moved (move, movement).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Plant Protection and Quarantine.* Plant Protection and Quarantine, Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.98-3(c) of this subpart or otherwise designated as a quarantined area in accordance with § 301.98-3(b) of this subpart.

*Regulated article.* Any article listed in § 301.98-2 or otherwise designated as a regulated article in accordance with § 301.98-2(d).

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands,

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714).

or any State, territory, or possession of the United States.

*West Indian fruit fly.* The insect known as the West Indian fruit fly, *Anastrepha obliqua* (Macquart), in any stage of development.

[66 FR 6433, Jan. 22, 2001; 66 FR 20186, Apr. 20, 2001]

#### § 301.98-2 Regulated articles.

The following are regulated articles:

(a) West Indian fruit flies.<sup>2</sup>

(b)(1) The following fruits and vegetables:

Barbados cherry (*Malpighia glabra*)

Carambola (*Averrhoa carambola*)

Granadilla, giant (*Passiflora quadrangularis*)

Guava (*Psidium guajava*)

Guava, strawberry (*Psidium littorale*)

Hog-plum (*Spondias mombin*)

Japanese plum (*Prunus salicina*)

Jew plum (*Spondias cytherea*)

Ketembilla (*Dovyalis hebecarpa*)

Loquat (*Eriobotrya japonica*)

Malay-apple (*Syzygium malaccense*)

Mango (*Mangifera indica*)

Passion fruit (*Passiflora edulis*)

Peach (*Prunus persica*)

Pear (*Pyrus communis*)

Ramón (*Brosimum alicastrum*)

Red mombin (*Spondias purpurea*)

Rose-apple (*Syzygium jambos*)

Sapodilla (*Manilkara zapota*)

Sapote (*Diospyros* spp.)

(2) Any fruits or vegetables that are canned or dried or frozen below -17.8 °C. (0 °F.) are not regulated articles.

(c) Soil within the dripline of plants that are producing or have produced the fruits or vegetables listed in paragraph (b) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a) through (c) of this section that an inspector determines presents a risk of spreading the West Indian fruit fly, when the inspector notifies the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

[66 FR 6433, Jan. 22, 2001, as amended at 70 FR 21326, Apr. 26, 2005]

<sup>2</sup>Permit and other requirements for the interstate movement of West Indian fruit flies are contained in part 330 of this chapter.

#### § 301.98-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined area in paragraph (c) of this section each State, or each portion of a State, in which the West Indian fruit fly has been found by an inspector, in which the Administrator has reason to believe that the West Indian fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the West Indian fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are substantially the same as those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the West Indian fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, this area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United

## Animal and Plant Health Inspection Service, USDA

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States quarantined for the West Indian fruit fly.

[66 FR 6433, Jan. 22, 2001, as amended at 66 FR 33632, June 25, 2001]

### § 301.98-4 Conditions governing the interstate movement of regulated articles from quarantined areas.

Any regulated article may be moved interstate from a quarantined area<sup>3</sup> only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.98-5 and 301.98-8 of this subpart;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by West Indian fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a Departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the Departmental permit and found by the Administrator to be adequate to prevent the spread of the West Indian fruit fly; and

(4) With a tag or label bearing the number of the Departmental permit issued for the regulated article attached to the outside of the container

of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579-0170)

### § 301.98-5 Issuance and cancellation of certificates and limited permits.

(a) A certificate may be issued by an inspector<sup>4</sup> for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.98-10 of this subpart; or

(ii) Based on inspection of the premises of origin, the premises are free from the West Indian fruit fly; or

(iii) Based on inspection of the regulated article, the regulated article is free of West Indian fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the West Indian fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714)<sup>5</sup> to prevent the spread of the West Indian fruit fly; and

<sup>4</sup>Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, or the APHIS web site at <http://www.aphis.usda.gov/travel/aqui.html>.

<sup>5</sup>Section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

<sup>3</sup>Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector<sup>6</sup> will issue a limited permit for the interstate movement of a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the West Indian fruit fly because life stages of the West Indian fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (Title IV, Pub. L. 106-224, 114 Stat. 444, 7 U.S.C. 7714) to prevent the spread of the West Indian fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article if an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article when an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or

limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Administrator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0170)

**§ 301.98-6 Compliance agreements and cancellation.**

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.<sup>7</sup>

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, within 10 days after

<sup>7</sup>Compliance agreement forms are available without charge from the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, Invasive Species and Pest Management, 4700 River Road Unit 134, Riverdale, MD 20737-1236, and from local offices of the Plant Protection and Quarantine, which are listed in telephone directories.

<sup>6</sup>See footnote 4 to § 301.98-5(a).

receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

**§ 301.98-7 Assembly and inspection of regulated articles.**

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.98-5(c)) who desires to move a regulated article interstate accompanied by a certificate or limited permit must notify an inspector<sup>8</sup> as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

**§ 301.98-8 Attachment and disposition of certificates and limited permits.**

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier to the consignee listed on the certificate or limited permit upon arrival

at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579-0170)

**§ 301.98-9 Costs and charges.**

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for all costs and charges arising from inspection and other services provided outside normal business hours.

**§ 301.98-10 Treatments.**

Treatment schedules listed in part 305 of this chapter to destroy the West Indian fruit fly are authorized for use on regulated articles. The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.98-2(a) of this subpart.* Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of ½ inch.

(b) *Premises.* Fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles may receive regular treatments with either malathion or spinosad bait spray as an alternative to treating fruits and vegetables as provided in part 305 of this chapter. These treatments must take place at 6- to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for development of West Indian fruit fly egg and larvae. Determination of the time period must be based on the day degrees model for West Indian fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per

<sup>8</sup>See footnote 4 to § 301.98-5(a).

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acre. For ground applications, the mixture may be diluted with water to improve coverage.

[66 FR 6433, Jan. 22, 2001, as amended at 67 FR 8465, Feb. 25, 2002; 70 FR 33269, June 7, 2005]

### Subpart—Sapote Fruit Fly

SOURCE: 68 FR 24610, May 8, 2003, unless otherwise noted.

#### § 301.99 Restrictions on interstate movement of regulated articles.

No person may move interstate from any quarantined area any regulated article except in accordance with this subpart.<sup>1</sup>

#### § 301.99–1 Definitions.

*Administrator.* The Administrator, Animal and Plant Health Inspection Service, or any person authorized to act for the Administrator.

*Animal and Plant Health Inspection Service.* The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture.

*Certificate.* A document in which an inspector or person operating under a compliance agreement affirms that a specified regulated article is free of sapote fruit fly and may be moved interstate to any destination.

*Compliance agreement.* A written agreement between APHIS and a person engaged in growing, handling, or moving regulated articles, wherein the person agrees to comply with this subpart.

*Core area.* The 1-square-mile area surrounding each property where sapote fruit fly has been detected.

*Day degrees.* A mathematical construct combining average temperature over time that is used to calculate the length of a sapote fruit fly life cycle. Day degrees are the product of the following formula, with all temperatures measured in °F:

<sup>1</sup>Any properly identified inspector is authorized to stop and inspect persons and means of conveyance and to seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of regulated articles as provided in section 414 of the Plant Protection Act (7 U.S.C. 7714).

(Minimum Daily Temp + Maximum Daily Temp)/2 – 54 = Day Degrees.

*Departmental permit.* A document issued by the Administrator in which he or she affirms that interstate movement of the regulated article identified on the document is for scientific or experimental purposes and that the regulated article is eligible for interstate movement in accordance with § 301.99–4(c) of this subpart.

*Dripline.* The line around the canopy of a plant.

*Infestation.* The presence of the sapote fruit fly or the existence of circumstances that makes it reasonable to believe that the sapote fruit fly is present.

*Inspector.* Any employee of APHIS or other person authorized by the Administrator to perform the duties required under this subpart.

*Interstate.* From any State into or through any other State.

*Limited permit.* A document in which an inspector or person operating under a compliance agreement affirms that the regulated article identified on the document is eligible for interstate movement in accordance with § 301.99–5(b) only to a specified destination and only in accordance with specified conditions.

*Moved (move, movement).* Shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

*Person.* Any association, company, corporation, firm, individual, joint stock company, partnership, society, or other entity.

*Plant Protection and Quarantine.* The Plant Protection and Quarantine program of the Animal and Plant Health Inspection Service, United States Department of Agriculture.

*Quarantined area.* Any State, or any portion of a State, listed in § 301.99–3(c) or otherwise designated as a quarantined area in accordance with § 301.99–3(b).

*Regulated article.* Any article listed in § 301.99–2 or otherwise designated as a regulated article in accordance with § 301.99–2(d).

*Sapote fruit fly.* The insect known as the sapote fruit fly, *Anastrepha*

*serpentina*, in any stage of development.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

#### § 301.99-2 Regulated articles.

The following are regulated articles:

- (a) Sapote fruit flies.<sup>2</sup>
- (b) The following fruits and vegetables:

Abiu (*Pouteria caimito*)  
 Apple (*Malus domestica*)  
 Avocado (*Persea americana*)  
 Black sapote (*Diospyros digyna*)  
 Citrus (*Citrus* spp.)  
 Egg-fruit tree (*Pouteria campechiana*)  
 Green sapote (*Pouteria viridis*)  
 Guava (*Psidium guajava*)  
 Hog-plum (*Spondias mombin*)  
 Ketembilla (*Dovyalis hebecarpa*)  
 Lucmo (*Pouteria obovata*)  
 Mammy apple (*Mammea americana*)  
 Mango (*Mangifera indica*)  
 Nance (*Byrsonima crassifolia*)  
 Panama orange (*Citrofortunella x mitis*)  
 Peach (*Prunus persica*)  
 Pear (*Pyrus communis*)  
 Pond-apple (*Annona glabra*)  
 Quince (*Cydonia oblonga*)  
 Red mombin (*Spondias purpurea*)  
 Sapodilla (*Manilkara zapota*)  
 Sapote (*Diospyros* spp.)  
 Star-apple (*Chrysophyllum Cainito*)

Any fruits or vegetables that are not canned or dried or frozen below -17.8 °C. (0 °F.).

(c) Soil within the dripline of plants that are producing or have produced the fruits or vegetables listed in paragraph (b) of this section.

(d) Any other product, article, or means of conveyance not listed in paragraphs (a) through (c) of this section that an inspector determines presents a risk of spreading the sapote fruit fly, after the inspector provides written notification to the person in possession of the product, article, or means of conveyance that it is subject to the restrictions of this subpart.

#### § 301.99-3 Quarantined areas.

(a) Except as otherwise provided in paragraph (b) of this section, the Administrator will list as a quarantined

area in paragraph (c) of this section each State, or each portion of a State, in which the sapote fruit fly has been found by an inspector, in which the Administrator has reason to believe that the sapote fruit fly is present, or that the Administrator considers necessary to quarantine because of its inseparability for quarantine enforcement purposes from localities in which the sapote fruit fly has been found. Less than an entire State will be designated as a quarantined area only if the Administrator determines that:

(1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed by this subpart on the interstate movement of regulated articles; and

(2) The designation of less than the entire State as a quarantined area will prevent the interstate spread of the sapote fruit fly.

(b) The Administrator or an inspector may temporarily designate any nonquarantined area in a State as a quarantined area in accordance with paragraph (a) of this section. The Administrator will give a copy of this regulation along with a written notice for the temporary designation to the owner or person in possession of the nonquarantined area. Thereafter, the interstate movement of any regulated article from an area temporarily designated as a quarantined area will be subject to this subpart. As soon as practicable, the area will be added to the list in paragraph (c) of this section or the designation will be terminated by the Administrator or an inspector. The owner or person in possession of an area for which designation is terminated will be given notice of the termination as soon as practicable.

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the sapote fruit fly.

[68 FR 24610, May 8, 2003, as amended at 68 FR 43286, July 22, 2003]

<sup>2</sup>Permit and other requirements for the interstate movement of sapote fruit flies are contained in part 330 of this chapter.



**§ 301.99-4 Conditions governing the interstate movement of regulated articles from quarantined areas.**

Any regulated article may be moved interstate from a quarantined area<sup>3</sup> only if moved under the following conditions:

(a) With a certificate or limited permit issued and attached in accordance with §§ 301.99-5 and 301.99-8;

(b) Without a certificate or limited permit if:

(1) The regulated article originated outside the quarantined area and is either moved in an enclosed vehicle or is completely enclosed by a covering adequate to prevent access by sapote fruit flies (such as canvas, plastic, or other closely woven cloth) while moving through the quarantined area; and

(2) The point of origin of the regulated article is indicated on the waybill, and the enclosed vehicle or the enclosure that contains the regulated article is not opened, unpacked, or unloaded in the quarantined area; and

(3) The regulated article is moved through the quarantined area without stopping except for refueling or for traffic conditions, such as traffic lights or stop signs.

(c) Without a certificate or limited permit if the regulated article is moved:

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) Pursuant to a departmental permit issued by the Administrator for the regulated article;

(3) Under conditions specified on the departmental permit and found by the Administrator to be adequate to prevent the spread of the sapote fruit fly; and

(4) With a tag or label bearing the number of the departmental permit issued for the regulated article attached to the outside of the container of the regulated article or attached to the regulated article itself if not in a container.

(Approved by the Office of Management and Budget under control number 0579-0222)

<sup>3</sup>Requirements under all other applicable Federal domestic plant quarantines and regulations must also be met.

**§ 301.99-5 Issuance and cancellation of certificates and limited permits.**

(a) A certificate may be issued by an inspector<sup>4</sup> for the interstate movement of a regulated article if the inspector determines that:

(1)(i) The regulated article has been treated under the direction of an inspector in accordance with § 301.99-10; or

(ii) Based on inspection of the premises of origin, the premises are free from the sapote fruit fly; or

(iii) Based on inspection of the regulated article, the regulated article is free of sapote fruit flies; and

(2) The regulated article will be moved through the quarantined area in an enclosed vehicle or will be completely enclosed by a covering adequate to prevent access by the sapote fruit fly; and

(3) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714)<sup>5</sup> to prevent the spread of the sapote fruit fly; and

(4) The regulated article is eligible for unrestricted movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(b) An inspector<sup>6</sup> will issue a limited permit for the interstate movement of

<sup>4</sup>Services of an inspector may be requested by contacting local offices of Plant Protection and Quarantine, which are listed in telephone directories. The addresses and telephone numbers of local offices may also be obtained from the McAllen Work Station, Federal Building Suite 119, 320 North Main, McAllen, TX 78501-4699, or the APHIS Web site at <http://www.aphis.usda.gov/travel/aqi.html>.

<sup>5</sup>Section 414 of the Plant Protection Act (7 U.S.C. 7714) provides that the Secretary of Agriculture may, under certain conditions, hold, seize, quarantine, treat, apply other remedial measures to destroy or otherwise dispose of any plant, plant pest, plant product, article, or means of conveyance that is moving, or has moved into or through the United States or interstate if the Secretary has reason to believe the article is a plant pest or is infested with a plant pest at the time of movement.

<sup>6</sup>See footnote 4 to § 301.99-5(a).

a regulated article if the inspector determines that:

(1) The regulated article is to be moved interstate to a specified destination for specified handling, processing, or utilization (the destination and other conditions to be listed in the limited permit), and this interstate movement will not result in the spread of the sapote fruit fly because life stages of the sapote fruit fly will be destroyed by the specified handling, processing, or utilization;

(2) The regulated article is to be moved in compliance with any additional emergency conditions the Administrator may impose under section 414 of the Plant Protection Act (7 U.S.C. 7714) to prevent the spread of the sapote fruit fly; and

(3) The regulated article is eligible for interstate movement under all other Federal domestic plant quarantines and regulations applicable to the regulated article.

(c) Certificates and limited permits for the interstate movement of regulated articles may be issued by an inspector or person operating under a compliance agreement. A person operating under a compliance agreement may issue a certificate for the interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a certificate in accordance with paragraph (a) of this section. A person operating under a compliance agreement may issue a limited permit for interstate movement of a regulated article after an inspector has determined that the regulated article is eligible for a limited permit in accordance with paragraph (b) of this section.

(d) Any certificate or limited permit that has been issued may be withdrawn, either orally or in writing, by an inspector if he or she determines that the holder of the certificate or limited permit has not complied with all conditions in this subpart for the use of the certificate or limited permit. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal will be confirmed in writing as promptly as circumstances allow. Any person whose certificate or limited permit has been withdrawn may appeal the decision in writing to the Adminis-

trator within 10 days after receiving the written notification of the withdrawal. The appeal must state all of the facts and reasons upon which the person relies to show that the certificate or limited permit was wrongfully withdrawn. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

(Approved by the Office of Management and Budget under control number 0579-0222)

#### **§ 301.99-6 Compliance agreements and cancellation.**

(a) Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person is aware of this subpart, agrees to comply with its provisions, and agrees to comply with all the provisions contained in the compliance agreement.<sup>7</sup>

(b) Any compliance agreement may be canceled, either orally or in writing, by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this subpart. If the cancellation is oral, the cancellation and the reasons for the cancellation will be confirmed in writing as promptly as circumstances allow. Any person whose compliance agreement has been canceled may appeal the decision, in writing, to the Administrator, within 10 days after receiving written notification of the cancellation. The appeal must state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. As promptly as circumstances allow, the Administrator will grant or deny the appeal, in writing, stating the reasons for the decision. A hearing will be held to resolve

<sup>7</sup>Compliance agreement forms are available without charge from the McAllen Work Station, Federal Building Suite 119, 320 North Main, McAllen, TX 78501-4699, and from local Plant Protection and Quarantine offices, which are listed in telephone directories.

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any conflict as to any material fact. Rules of practice concerning a hearing will be adopted by the Administrator.

#### § 301.99-7 Assembly and inspection of regulated articles.

(a) Any person (other than a person authorized to issue certificates or limited permits under § 301.99-5(c)) who desires a certificate or limited permit to move a regulated article interstate must notify an inspector<sup>8</sup> as far in advance of the desired interstate movement as possible, but no less than 48 hours before the desired interstate movement.

(b) The regulated article must be assembled at the place and in the manner the inspector designates as necessary to comply with this subpart.

#### § 301.99-8 Attachment and disposition of certificates and limited permits.

(a) A certificate or limited permit required for the interstate movement of a regulated article must, at all times during the interstate movement, be:

(1) Attached to the outside of the container containing the regulated article; or

(2) Attached to the regulated article itself if not in a container; or

(3) Attached to the consignee's copy of the accompanying waybill. If the certificate or limited permit is attached to the consignee's copy of the waybill, the regulated article must be sufficiently described on the certificate or limited permit and on the waybill to identify the regulated article.

(b) The certificate or limited permit for the interstate movement of a regulated article must be furnished by the carrier or the carrier's representative to the consignee listed on the certificate or limited permit upon arrival at the location provided on the certificate or limited permit.

(Approved by the Office of Management and Budget under control number 0579-0222)

#### § 301.99-9 Costs and charges.

The services of the inspector during normal business hours (8 a.m. to 4:30 p.m., Monday through Friday, except holidays) will be furnished without cost. The user will be responsible for

<sup>8</sup>See footnote 4 to § 301.99-5(a).

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all costs and charges arising from inspection and other services provided outside normal business hours.

#### § 301.99-10 Treatments.

Treatment schedules listed in part 305 of this chapter to destroy the sapote fruit fly are authorized for use on regulated articles. The following treatments also may be used for the regulated articles indicated:

(a) *Soil within the dripline of plants that are producing or have produced the fruits and vegetables listed in § 301.99-2(a) of this subpart.* Apply diazinon at the rate of 5 pounds active ingredient per acre to the soil within the dripline with sufficient water to wet the soil to at least a depth of ½ inch.

(b) *Citrus fruits.* Regulated citrus fruits originating inside the quarantined area that are to be moved outside the quarantined area may be treated with methyl bromide fumigation in APHIS-approved chambers. Exposure period for this treatment is 2 hours.<sup>9</sup> Fruit pulp temperature must be between 21.1 °C and 29.4 °C (70 °F and 85 °F). This temperature requirement refers to fruit pulp only and not to air temperature within the chamber. Fruit taken from a cooling room may have to be pre-warmed before fumigation is attempted. To determine fruit pulp temperature, stab several fruit to the center with a suitable thermometer that reads at least in whole degrees (F or C). The lowest temperature should be used, not the average. The methyl bromide dosage is set at a rate of 2.5 pounds of 100 percent pure, type "Q" (for quarantine use only) methyl bromide per 1,000 cubic feet of chamber space.<sup>10</sup>

<sup>9</sup>To enhance equal concentrations of methyl bromide throughout the chamber, a fan should be placed near the point of gas introduction, and allowed to run for at least 15 minutes.

<sup>10</sup>Dosage is based upon chamber volume, not the volume of the fruit being treated. Fruit should be in cartons approved for fumigation. Cartons must be placed on pallets. There should be an air space of at least 1 foot between adjacent pallet loads; at least 1 foot between chamber walls and the nearest carton of fruit; and at least 2 feet between the height of the stack and the ceiling of the chamber. The compressed liquid methyl bromide inside the cylinder must be put through a volatilizer prior to injection into the

However, if, prior to treatment, representative sampling reveals a level of infestation greater than 0.5 percent for the lot, then the fruit is ineligible for treatment.

(c) *Premises.* Fields, groves, or areas that are located within a quarantined area but outside the infested core area and that produce regulated articles may receive regular treatments with either malathion or spinosad bait spray as an alternative to treating the regulated articles with methyl bromide fumigation or those treatments provided in part 305 of this chapter. These treatments must take place at 6-to 10-day intervals, starting a sufficient time before harvest (but not less than 30 days before harvest) to allow for development of sapote fruit fly egg and larvae. Determination of the time period must be based on the day degrees model for sapote fruit fly. Once treatment has begun, it must continue through the harvest period. The malathion bait spray treatment must be applied by aircraft or ground equipment at a rate of 2.4 oz of technical grade malathion and 9.6 oz of protein hydrolysate per acre. The spinosad bait spray treatment must be applied by aircraft or ground equipment at a rate of 0.01 oz of a USDA-approved spinosad formulation and 48 oz of protein hydrolysate per acre. For ground applications, the mixture may be diluted with water to improve coverage.

[68 FR 24610, May 8, 2003, as amended at 70 FR 33269, June 7, 2005]

## **PART 302—DISTRICT OF COLUMBIA; MOVEMENT OF PLANTS AND PLANT PRODUCTS**

Sec.

302.1 Definitions.

302.2 Movement of plants and plant products.

AUTHORITY: 7 U.S.C. 7701-7772 and 7781-7786; 7 CFR 2.22, 2.80, and 371.3.

SOURCE: 66 FR 1016, Jan. 5, 2001, unless otherwise noted.

chamber. Water temperature in the volatilizer must never fall below 65.6 °C (150 °F) at any time during gas injection.

### **§ 302.1 Definitions.**

*Inspector.* Any employee of the Animal and Plant Health Inspection Service or other person authorized by the Administrator to inspect and certify the plant health status of plants and products under this part.

*Interstate.* From any State into or through any other State.

*State.* The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

### **§ 302.2 Movement of plants and plant products.**

Inspection or documentation of the plant health status of plants or plant products to be moved interstate from the District of Columbia may be obtained by contacting the State Plant Health Director, Plant Protection and Quarantine, APHIS, Wayne A. Cawley, Jr. Building, Room 350, 50 Harry S. Truman Parkway, Annapolis, MD 21401-7080; phone: (410) 224-3452; fax: (410) 224-1142.

[66 FR 54641, Oct. 30, 2001]

## **PART 305—PHYTOSANITARY TREATMENTS**

Sec.

305.1 Definitions.

305.2 Approved treatments.

305.3-305-4 [Reserved]

### **Subpart—Chemical Treatments**

305.5 Treatment requirements.

305.6 Methyl bromide fumigation treatment schedules.

305.7 Phosphine treatment schedules.

305.8 Sulfuryl fluoride treatment schedules.

305.9 Aerosol spray for aircraft treatment schedules.

305.10 Treatment schedules for combination treatments.

305.11 Miscellaneous chemical treatments.

305.12-14 [Reserved]

### **Subpart—Cold Treatments**

305.15 Treatment requirements.

305.16 Cold treatment schedules.

### **Subpart—Quick Freeze Treatments**

305.17 Authorized treatments; exceptions.

305.18 Quick freeze treatment schedule.

305.19 [Reserved]